

SEVENTY-SEVENTH DAY

(Sunday, May 26, 1991)

The Senate met at 3:00 p.m. pursuant to adjournment and was called to order by Senator Brooks.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Heavenly Father, we pause now on this Sunday afternoon and pray that among these who are set aside to govern, there will be a spirit of sharing—sharing of strengths, of concerns—and, yes, of disappointments, but most of all the sharing of Your grace for all of this day.

As this session begins, may it commence on a note of optimism and belief that this will be a day of achievement, remembering the one thing we can give and keep is our word.

In Your name we pray. Amen.

On motion of Senator Haley and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-SPONSOR OF HOUSE BILL 1413

On motion of Senator Montford and by unanimous consent, Senator Dickson will be shown as Co-sponsor of H.B. 1413.

CO-SPONSOR OF HOUSE BILL 1201

On motion of Senator Armbrister and by unanimous consent, Senator Brown will be shown as Co-sponsor of H.B. 1201.

CO-SPONSORS OF HOUSE CONCURRENT RESOLUTION 228

On motion of Senator Brown and by unanimous consent, Senators Zaffirini and Ellis will be shown as Co-sponsors of H.C.R. 228.

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 1490, To Committee on Jurisprudence.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 228, Recognizing 1991 as the Bill of Rights Bicentennial.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 858**: Gibson, Chair; Denton, Oakley, Jones, Crawford.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 935**: Gibson, Chair; Linebarger, Counts, Junell, Hudson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1103**: Earley, Chair; Shelley, S. Turner, Dutton, Yost.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 977**: Saunders, Chair; Alexander, Oakley, Hightower, Jackson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 587**: R. Lewis, Chair; Harris, Rabuck, Yarbrough, Bomer.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 582**: Hernandez, Chair; A. Smith, Greenburg, Brady, Bosse.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 380**: Black, Chair; Hartnett, McCollough, Smithee, Stiles.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 6**: Robnett, Chair; Kuempel, Delisi, Soileau, Kubiak.

The House has adopted the Conference Committee Report on **H.B. 591** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 355**: Denton, Chair; Smithee, Goodman, Place, Cook.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE ON SENATE BILL 692
DISCHARGED**

On motion of Senator Haley and by unanimous consent, the Senate conferees on **S.B. 692** were discharged.

Question—Shall the Senate concur in the House amendments to **S.B. 692**?

Senator Haley moved to concur in the House amendments to **S.B. 692**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

BILLS AND RESOLUTION SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolution:

S.C.R. 141	S.B. 483	S.B. 876	S.B. 1249
S.B. 44	S.B. 493	S.B. 911	S.B. 1287
S.B. 101	S.B. 508	S.B. 912	S.B. 1302
S.B. 142	S.B. 513	S.B. 933	S.B. 1306
S.B. 151	S.B. 557	S.B. 967	S.B. 1359
S.B. 180	S.B. 592	S.B. 980	S.B. 1360
S.B. 183	S.B. 608	S.B. 997	S.B. 1389
S.B. 201	S.B. 642	S.B. 1032	S.B. 1415
S.B. 218	S.B. 658	S.B. 1042	S.B. 1418
S.B. 240	S.B. 659	S.B. 1049	S.B. 1428
S.B. 246	S.B. 669	S.B. 1083	S.B. 1451
S.B. 249	S.B. 693	S.B. 1105	S.B. 1456
S.B. 291	S.B. 700	S.B. 1115	S.B. 1468
S.B. 303	S.B. 746	S.B. 1119	S.B. 1481
S.B. 364	S.B. 750	S.B. 1127	S.B. 1508
S.B. 381	S.B. 769	S.B. 1165	S.B. 1554
S.B. 411	S.B. 787	S.B. 1169	S.B. 1570
S.B. 422	S.B. 791	S.B. 1175	S.B. 1578
S.B. 437	S.B. 797	S.B. 1246	S.B. 1590
S.B. 445	S.B. 857	S.B. 1247	S.B. 1612

AT EASE

The Presiding Officer at 3:07 p.m. announced that the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President called the Senate to order as In Legislative Session at 3:42 p.m.

SENATE BILL 1520 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 1520 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Martinez

Amend S.B. 1520, Section 8 as follows:

(1) On page 5, line 21 insert the following after the word "state" and before the period.

, except as provided in this section

(2) On page 6, line 3 add a new subsection "d" to read as follows:

(d) To accomplish the purposes of this Act, municipalities over 750,000 in population may establish licensing requirements which impose stricter standards than provided in Section 6 (Rights and Duties of License Holder) of this Act.

The amendment was read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendment to S.B. 1520 by a viva voce vote.

SENATE BILL 1123 WITH HOUSE AMENDMENTS

Senator Brooks called S.B. 1123 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - A. Hill

Amend S.B. 1123 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to regulation of dispensing opticians; providing a civil and criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the Opticians' Registry Act.

SECTION 2. PURPOSE; CONSTRUCTION. (a) To safeguard public health, safety, and welfare by providing a means by which the public can identify providers of ophthalmic dispensing services and products that meet minimum standards of competence, it is the purpose of this Act to provide for the registration and certification of dispensing opticians.

(b) This Act is not intended to authorize, and may not be construed as authorizing, a dispensing optician to perform any act on the optician's own authority that the optician is not otherwise authorized to perform, including any act that constitutes the practice of medicine or optometry.

SECTION 3. DEFINITIONS. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Contact lens dispensing" means the fabrication, ordering, mechanical adjustment, dispensing, sale, and delivery to the consumer of contact lenses prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea, or evaluating the physical fit of the contact lenses, unless that action is directed or approved by a licensed physician.

(3) "Contact lens prescription" means a written specification by a licensed physician or optometrist for therapeutic, corrective, or cosmetic contact lenses, that states the refractive power of the product and other information as required by:

(A) the physician or the Texas State Board of Medical Examiners; or

(B) the optometrist or the Texas Optometry Board.

(4) "Council" means the Advisory Council of the Opticians' Registry.

(5) "Department" means the Texas Department of Health.

(6) "Dispensing optician" or "ophthalmic dispenser" means a person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(7) "Spectacle dispensing" means the design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist. The term includes:

(A) prescription analysis and interpretation;

(B) the taking of measurements of the face, including interpupillary distances, to determine the size, shape, and specifications of the spectacle lenses or frames best suited to the wearer's needs;

(C) the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating spectacles;

(D) the verification of the quality of finished spectacle lenses;

(E) the adjustment of spectacle lenses or frames to the intended wearer's face; and

(F) the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses.

(8) "Spectacle prescription" means a written specification by a licensed physician or optometrist for therapeutic or corrective lenses that states the refractive power of the product and other information as required by the physician or optometrist.

SECTION 4. PROHIBITED ACTS. (a) A person may not represent to the public that the person is a "Registered Dispensing Optician" or "Registered Spectacle Dispenser" unless the person is registered with the board as a spectacle dispensing optician and complies with this Act.

(b) A person may not represent that the person is a "Registered Contact Lens Dispenser" or "Registered Contact Lens Technician" unless the person is registered with the board as a contact lens dispenser and complies with this Act.

(c) A person registered under this Act may not dispense contact lenses except from a contact lens prescription that specifies that the prescription is for contact lenses. Except as authorized under Section 14 of this Act or Section 5.17, Texas Optometry Act (Article 4552-5.17, Vernon's Texas Civil Statutes), a person registered under this Act as a contact lens dispenser may not dispense contact lenses from the prescription of an optometrist or physician in any manner that adjusts or alters the specific, written instructions of the prescribing optometrist or physician, and may not measure the patient's eyes or cornea or evaluate the physical fit of contact lenses by any means unless that action is directed or approved by a licensed physician. Violation of this subsection constitutes the practice of medicine or optometry without a license and is subject to the appropriate penalties.

(d) A person properly registered under this Act may represent himself to the public as a "Registered Dispensing Optician," a "Registered Spectacle Dispenser," a "Registered Contact Lens Technician," or a "Registered Contact Lens Dispenser." The person may not use abbreviations or other letters to represent that the person is registered.

SECTION 5. DUTIES OF BOARD; ADVISORY COUNCIL. (a) The board shall adopt procedural rules to implement the registration procedures under this Act. The board also may adopt substantive and procedural rules relating to:

(1) the minimum requirements for the registration of dispensing opticians;

(2) the probation, suspension, denial, or revocation of a registration;

(3) the setting of fees under this Act; and

(4) the adoption of forms required by this Act.

(b) The board may not adopt substantive rules relating to this Act other than substantive rules described by Subsection (a) of this section.

(c) The board shall appoint a nine-member advisory council to be known as the Advisory Council of the Opticians' Registry to advise the board on matters relating to implementation of this Act. The members shall be appointed from different geographical areas to ensure representation of urban and rural interests.

(d) The board shall appoint members of the council as follows:

(1) three must be opticians eligible for registration under this Act, one of whom is eligible only as a contact lens dispensing optician, one of whom is eligible only as a spectacle dispensing optician, and one of whom is eligible for registration in either category;

(2) two must be physicians licensed and practicing in this state whose practice is limited to ophthalmology;

(3) two must be optometrists licensed and practicing in this state; and

(4) two must be consumers who do not have, and whose spouses do not have, a direct or indirect interest in any health care related business or trade association.

(e) The council shall annually elect a chairman and vice-chairman.

(f) A council member is not entitled to compensation for service on the council, but is entitled to the per diem and transportation allowance for state officials set in the General Appropriations Act for each day that the member engages in the business of the council.

(g) Members are appointed for staggered terms of six years, with three terms beginning March 1 of each odd-numbered year. Members shall serve until the expiration of the term to which they have been appointed or until their successors have qualified. A member may not serve more than two consecutive terms.

SECTION 6. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer this Act.

(b) The department shall investigate persons engaging in practices that violate this Act, and shall investigate all complaints filed with the department against persons registered under this Act.

(c) The department may employ administrative and clerical staff as necessary to carry out this Act.

SECTION 7. EXAMINATIONS. (a) The department shall administer a written qualifying spectacle dispensing examination and a written qualifying contact lens dispensing examination at least once a year to applicants for registration. The qualifying examinations shall be professionally constructed and validated and objectively administered and scored.

(b) If a person fails to pass a qualifying examination, the person may reapply to take a subsequent examination. An applicant who fails two successive examinations may not reapply until the applicant completes any remedial work required by the department.

SECTION 8. CERTIFICATE OF REGISTRATION. (a) On application and payment of a registration fee, the department shall issue a certificate of registration to each applicant who:

(1) presents evidence satisfactory to the department that the applicant has successfully completed the number of classroom hours required by the board; and

(2) passes the appropriate examination required under Section 7 of this Act.

(b) The board may not require more than 30 classroom hours of training as a prerequisite to registration.

(c) A person may qualify and be registered as a contact lens dispenser, as a spectacle dispenser, or as both a contact lens dispenser and a spectacle dispenser.

(d) A person issued a certificate by the department shall display the certificate in an appropriate public manner as specified by board rule.

(e) A certificate of registration is the property of the department and must be surrendered on demand.

SECTION 9. RENEWAL OF REGISTRATION. (a) A certificate of registration issued under this Act is valid for one year from the date of issuance. To renew the registration, the registrant must submit an application for renewal in the manner prescribed by the board. The application must be accompanied by a renewal fee and evidence that the applicant has successfully completed the continuing education courses required by board rule. The board may not require more than 10 classroom hours of continuing education courses per year.

(b) The department shall adopt a system under which registrations expire and are renewed on various dates of the year.

(c) A person registered under this Act who does not renew the registration by the expiration date may renew the registration not later than the 180th day after the expiration date by paying a late registration fee as prescribed by the board.

(d) The registration of a person who fails to meet the renewal requirements under this section is void until the person submits a new application, pays the appropriate fees, and meets the current requirements for registration.

SECTION 10. ENFORCEMENT; PENALTY. (a) The board, the attorney general, or the district or county attorney for the county in which an alleged violation of this Act occurs, on the verified complaint of any person, shall enforce this Act and rules adopted under this Act by appropriate administrative proceedings or appropriate judicial proceedings in a court of competent jurisdiction.

(b) A person commits an offense if the person violates this Act. An offense under this Act is a Class B misdemeanor.

(c) The attorney general or an attorney representing the state may sue in a court of competent jurisdiction to enjoin or restrain a person from violating this Act or a rule adopted under this Act.

(d) In addition to granting injunctive relief or any other remedy provided by law, a court may impose a civil penalty for a violation of this Act or a rule adopted under this Act.

SECTION 11. FEES; FUND. (a) The board by rule shall prescribe fees in the amounts necessary to administer this Act, not to exceed:

- (1) \$50 for an initial application for a registration;
- (2) \$20 for the issuance of a certificate of registration;
- (3) \$30 for the annual renewal certificate of registration; and
- (4) \$20 for issuance of a duplicate certificate of registration or renewal certificate of registration.

(b) The board shall deposit all amounts received under this Act in the state treasury to the credit of a special fund known as the optician registry fund. Money in that fund may be used only by the Texas Department of Health for the administration of this Act.

SECTION 12. DENIAL, SUSPENSION, REVOCATION, AND PROBATION. (a) The department may refuse to issue a certificate of registration to an applicant, suspend or revoke a certificate of registration, or place on probation an individual who is registered under this Act if the individual:

- (1) obtains a certificate by means of fraud, misrepresentation, or concealment of material facts;
- (2) sells, barter, or offers to sell or barter a certificate of registration;
- (3) violates a lawful rule adopted by the board;
- (4) violates Section 4 of this Act; or
- (5) practices medicine or optometry without a license.

(b) A person whose application of registration is denied, suspended, or revoked is entitled to a hearing before the department if the person submits a written request for a hearing to the department. A hearing is governed by department rules for a contested hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 13. APPLICATION OF THIS ACT. (a) This Act does not prevent, limit, or restrict a person licensed in this state under any other law from engaging in the profession or occupation for which the person is licensed, and does not require such a person to be registered under this Act.

(b) This Act does not prevent, limit, or restrict an employee of a person licensed in this state from performing the duties of employment required by the licensed person and does not require the employee to be registered under this Act.

(c) This Act does not prevent, limit, or restrict an individual, firm, or corporation from employing a person registered under this Act or from engaging in spectacle or contact lens dispensing through a person registered under this Act who is employed at the location at which the dispensing occurs.

(d) This Act does not prevent, limit, or restrict an individual, firm, or corporation from employing a person as an assistant, trainee, or apprentice to engage in spectacle dispensing.

(e) This Act does not prevent, limit, or restrict an individual, firm, or corporation from employing a person as an assistant, trainee, or apprentice to engage in contact lens dispensing or to provide instruction in the care and handling of contact lenses.

(f) This Act does not prohibit the Texas State Board of Medical Examiners, the Texas Optometry Board, the attorney general, or any other person authorized by law from bringing appropriate actions to enforce the statutes of this state relating to the practice of medicine without a license or the practice of optometry without a license.

(g) This Act does not require that a person who works in a wholesale laboratory that fabricates contact lenses be registered as a contact lens dispenser. For purposes of this subsection, "wholesale laboratory" means a contact lens manufacturing facility that does not sell its finished product directly to the public.

SECTION 14. PHYSICIAN'S PRESCRIPTIONS; DELEGATION. (a) Neither this Act nor any other law of this state relating to dispensing opticians prevents, limits, or restricts a licensed physician from treating or prescribing for the physician's patients or directing or instructing others under the physician's control or supervision, from aiding or ministering to the needs of those patients according to specific directions, orders, instructions, or prescriptions.

(b) If a physician's directions, instructions, orders, or prescriptions are to be followed, performed, carried out, or filled by a registered dispensing optician separate from and independent of a physician's office, the directions, instructions, orders, or prescriptions must:

(1) be written;

(2) be of a scope and content and be communicated to the dispensing optician in a form and manner that, in the professional judgment of the physician, best serves the health, safety, and welfare of the physician's patients; and

(3) be in a form and detail consistent with the particular dispensing optician's skill and knowledge.

(c) A person registered under this Act as a contact lens dispenser may take measurements of the eye or cornea and may evaluate the physical fit of lenses for a particular patient of a licensed physician if the physician has delegated those responsibilities with regard to that specific patient in writing to the contact lens dispenser in accordance with this section and Section 5.17, Texas Optometry Act (Article 4552-5.17, Vernon's Texas Civil Statutes).

SECTION 15. INITIAL APPOINTMENTS. The term of an initial appointee to the council shall be determined by lot as follows: three members are appointed for terms expiring March 1, 1993; three members are appointed for terms expiring March 1, 1995; and three members are appointed for terms expiring March 1, 1997.

SECTION 16. EFFECTIVE DATE; TRANSITION. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1991.

(b) Sections 4 and 10 of this Act take effect September 1, 1992, and a person subject to regulation under this Act is not required to be registered until September 1, 1992.

(c) The department shall prorate initial registration fees so that a registered person pays only for the part of the year that occurs up to the expiration date of the registration.

(d) A person who has been actively engaged in spectacle dispensing or contact lens dispensing for a period of three years preceding the effective date of this Act is entitled to a certificate of registration without examination if the person:

(1) applies to the department for registration not later than August 31, 1992; and

(2) pays the registration fee set by the department.

SECTION 17. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Committee Amendment - Hilbert

Amend C.S.S.B. 1123 subsection (a) of Section 2 by striking the words "the registration" on line 11 of the bill and substituting in lieu thereof: "a system of voluntary registration".

Amend C.S.S.B. 1123 subsection (b) of Section 11 by striking the words after the word "may be used only by" and substituting in lieu thereof: "is hereby appropriated to the Department to be used by".

Amend C.S.S.B. 1123 subsection (c) of Section 13 by striking the words "spectacle or contact lens dispensing" and substituting in lieu thereof: "spectacle dispensing or the functions of contact lens dispensing".

Amend C.S.S.B. 1123 subsection (g) of Section 13 by striking the first sentence thereof, and substituting in lieu thereof the following sentence:

"This act does not require either, that a person be registered under this act in order to engage in the sale or dispensing of contact lenses, or that a person who works in a wholesale laboratory that fabricates contact lenses be registered as a contact lens dispenser."

The amendments were read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendments to S.B. 1123 by a viva voce vote.

SENATE BILL 1273 WITH HOUSE AMENDMENT

Senator Rosson called S.B. 1273 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Luna

Amend S.B. 1273 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to funding for regional vocational education planning committees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 16.155, Education Code, is amended by adding Subsection (h) to read as follows:

(h) Out of the total statewide allotment for vocational education under this section, the commissioner of education shall set aside an amount specified in the General Appropriations Act, which may not exceed an amount equal to one percent of the total amount appropriated, to support regional vocational education planning committees established under Section 21.115(b) of this code. After deducting the amount set aside under this Subsection from the total amount appropriated for vocational education under this section, the commissioner shall reduce each

district's allotment in the same manner described for a reduction in state funds under Section 16.254(d).

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Rosson and by unanimous consent, the Senate concurred in the House amendment to S.B. 1273 by a viva voce vote.

SENATE BILL 259 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 259 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Russell

Amend S.B. 259 on page 5, line 11 as follows:

Delete lines 11 through 14, and substitute "conviction ends on the day that the person discharges parole." in lieu thereof.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to S.B. 259 by a viva voce vote.

SENATE BILL 546 WITH HOUSE AMENDMENTS

Senator Barrientos called S.B. 546 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Naishtat

Amend S.B. 546 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the abolition of the Texas Housing Agency and the Texas Department of Community Affairs and to the transfer of their functions to, and the creation and functions of, the Texas Department of Housing and Community Affairs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The Texas Housing Agency and the Texas Department of Community Affairs are abolished by this Act and their functions are merged, amended, and transferred to a new agency created by this Act, the Texas Department of Housing and Community Affairs.

(b) Section 2 of this Act merges, amends, and transfers to a new statute, Article 4413(501) of the Revised Statutes, the statutes that governed the abolished agencies. The new statute governs the new Texas Department of Housing and Community Affairs. Parenthetical phrases are included at the end of each section of the new statute to explain whether the section is derived from the law that governed the Texas Housing Agency, which was Article 1269I-6 of Vernon's Texas Civil Statutes, is derived from the law that governed the Texas Department of Community Affairs, which was Article 4413(201) of Vernon's Texas Civil Statutes, or is a new provision.

SECTION 2. The Texas Housing Agency Act (Article 1269I-6, Vernon's Texas Civil Statutes) and Chapter 879, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(201), Vernon's Texas Civil Statutes), are codified in Title 70, Revised Statutes, as Article 4413(501), Revised Statutes, and amended to read as follows:

Art. 4413(501). Texas Department of Housing and Community Affairs
Part 1. General Provisions

~~[Sec. 1. SHORT TITLE. This Act shall be known and may be cited as the Texas Housing Agency Act.]~~ (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 1.01 ~~[+]~~. PURPOSE. (a) The purpose of this article ~~[Act]~~ is to create a Texas Department of Housing and Community Affairs to assist local governments in providing essential public services for their residents ~~[citizens]~~ and overcoming financial, social, and environmental problems; to provide for the housing needs of persons and families of low and moderate income; to contribute to the preservation, development, and redevelopment of neighborhoods and communities; to assist the Governor and the Legislature in coordinating federal and State programs affecting local government; and to continually inform State officials and the public about the needs of local government. The Texas Department of Housing and Community Affairs is a public and official agency of the state, and the state is to act by and through the department in carrying out the powers and duties conferred by this article. The exercise by the department of all powers and duties conferred by this article is an essential public and governmental function and purpose of the state acting by and through the department in promoting the general welfare and prosperity of the state and all its residents.

(b) ~~[Sec. 4. PRIMARY PURPOSE OF THE AGENCY; DECLARATION OF POLICY.]~~ It is hereby declared:

(1) that it is a goal of the state that every Texan should have a decent, safe, and affordable living environment;

(2) that government at all levels should be involved in assisting persons and families of low income in obtaining decent, safe, and affordable living environments;

(3) ~~[(a)]~~ that there exists within both rural and urban areas of this state a shortage of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare, and prosperity of the residents and communities of this state;

(4) ~~[(b)]~~ that it is imperative that the supply of affordable and standard condition residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased;

(5) ~~[(c)]~~ that private enterprise and investment are often ~~unable;~~ without financial assistance; to provide in sufficient quantities the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; and

(6) ~~[(d)]~~ that for profit and nonprofit private enterprise and investment should be encouraged to develop land and to build and to rehabilitate residential housing for such persons and families, and that private financing be supplemented by financing as provided in this article ~~[Act]~~ in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout this state.

(c) It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which

such persons or families can afford, the legislature finds that it is necessary to create and establish a state [housing finance] agency that encourages [for the purpose of encouraging] the investment of private and public capital and stimulates [stimulating] the acquisition, construction, and rehabilitation of residential housing to meet the needs of such persons and families through the use of public financing, to provide construction and mortgage loans, and to make provision for the purchase of mortgage loans and otherwise.

(d) It is hereby further declared to be necessary and in the public interest that such state [housing finance] agency provide for predevelopment costs, temporary financing, incidental land development expenses, and residential housing acquisition, construction, or rehabilitation by housing sponsors for sale or rental to persons and families of low income and families of moderate income; and further, to provide mortgage financing, including, without limitation, long-term federally insured mortgages to eligible housing sponsors; and further, to increase the acquisition, construction, and rehabilitation of low income housing through the purchase from mortgage lenders authorized to transact business within the state of first mortgage loans for residential housing for persons and families of low income and families of moderate income in this state; and further, to assist in making financing available for the purchase, installation, or repair of energy conservation devices or renewable energy systems by persons and families of low income and families of moderate income; and further, to provide technical, consultative, and project assistance services to private nonprofit sponsors, to assist in coordinating federal, state, regional, and local public and private efforts and resources, to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages, and to preserve the quality of life in this state.

(e) It is hereby further declared that all of the foregoing are public purposes and uses for which public money may be borrowed, expended, advanced, loaned, granted, or appropriated, and that such activities serve a public purpose in improving or otherwise benefitting the people of this state; that the necessity of enacting the provisions of this article [Act] is in the public interest and is hereby so declared as a matter of express legislative determination.

(f) The Texas Department of Housing and Community Affairs shall have as its highest priority the providing of assistance to persons and families of low and very low income who are not assisted by private enterprise or other governmental programs in obtaining affordable housing or other services and programs offered by the department. (part from Section 1, Article 4413(201), Vernon's Texas Civil Statutes; part from Section 4, Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 1.02 [2]. DEFINITIONS. As used in this article [Act]:

(1) "Department" means the Texas Department of Housing and Community Affairs.

(2) "Director" means the executive director of the Texas Department of Housing and Community Affairs.

(3) "Local government" means a county; an incorporated municipality; a special district; any other legally constituted political subdivision of the State; a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code; or a combination of any of the entities described by this subdivision [political subdivisions].

(4) [Sec. 2. — DEFINITIONS. In this Act the following words, as used in this Act, shall have the meanings set forth below, unless the context clearly requires otherwise:

[(a) "Act" means the Texas Housing Agency Act.

[(b) "Agency" means the Texas Housing Agency created by the Act.

[(c)] "Board" means the governing board [of directors] of the department [agency].

(5) [(f)] “Bond” means any type of evidence of indebtedness issued by the department under Part 3 of this article [interest-bearing obligation], including, without limitation, any bond, note, bond or revenue anticipation note, or other obligation [evidence of indebtedness], whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in certificated or book-entry form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment.

(6) [(e)] “Director” means a member of the board.

[(f)] “Federal government” means the United States of America or any department, division, agency, or instrumentality, corporate or otherwise, of the United States of America.

(7) [(g)] “Federally insured mortgage” means a mortgage loan for residential housing which is insured or guaranteed by the federal government or for which there is a commitment to insure or guarantee the mortgage by the federal government.

(8) [(h)] “Federal mortgage” means a mortgage loan for residential housing made by the federal government or for which there is a commitment by the federal government to make the mortgage loan.

(9) [(i)] “Housing development costs” means the total of all costs incurred in financing, creating, or purchasing any housing development, including but not limited to a single-family dwelling, which is approved by the department [agency] as reasonable and necessary. The costs may include but are not limited to:

(A) [(1)] the value of land and any buildings on the land owned by the sponsor or the cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing site;

(B) [(2)] cost of site preparation, demolition, and development;

(C) [(3)] any expenses relating to the issuance of bonds;

(D) [(4)] fees paid or payable in connection with the planning, execution, and financing of the housing development, such as those to the architects, engineers, attorneys, accountants, and the housing finance division on behalf of the department [agency];

(E) [(5)] cost of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(F) [(6)] cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(G) [(7)] cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not the costs have been paid in cash or in a form other than cash;

(H) [(8)] necessary expenses in connection with initial occupancy of the housing development;

(I) [(9)] a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(J) [(10)] an allowance established by the department [agency] for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(K) [(11)] the cost of the other items, including tenant relocation, if tenant relocation costs are not otherwise being provided for, as the department [agency] shall determine to be reasonable and necessary for the

development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

(10) [(j)] "Housing development" or "housing project" means any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards prescribed by the department [agency] and which is financed pursuant to the provisions of this article [Act] for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by persons and families of low and very low income and families of moderate income in need of housing. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the department [agency] determines to be necessary, convenient, or desirable appurtenances. "Housing development" and "housing project" include both single-family dwellings and multifamily dwellings in rural and in urban areas.

(11) [(k)] "Housing sponsor" means individuals, including persons and families of low and very low income or families of moderate income, joint ventures, partnerships, limited partnerships, trusts, firms, corporations, and cooperatives, approved by the department [agency] as qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department [agency] and other terms and conditions set forth in this article [Act]. In economically depressed or blighted areas or in federally assisted new communities located within a home-rule city, "housing sponsor" may include a person or persons or family or families whose income exceeds the amount constituting moderate income if at least 90 percent of the total mortgage amount available under a mortgage revenue bond issue is designated for persons and families of low income or families of moderate income.

(12) [(t)] "Land development" means the process of acquiring land for residential housing construction and making, installing, or constructing nonresidential improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas, and electric lines and installations, roads, streets, curbs, gutters, and sidewalks, whether on or off the site, which the department [agency] deems necessary or desirable for housing developments to be financed by the department [agency].

(13) [(m)] "Mortgage" means a mortgage, mortgage deed, deed of trust, or other instrument which constitutes a lien:

(A) [(1)] on real property; or

(B) [(2)] on a leasehold under a lease having a remaining term which at the time the mortgage is acquired does not expire until after the maturity date of the interest-bearing obligation secured by the mortgage.

(14) [(n)] "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, or other financial institution authorized to transact business in the state that is approved as a mortgage lender by the department [agency].

(15) [(o)] "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a lien on real property in the state.

(16) [(p)] "Municipality" means any city, town, or village in this state.

(17) ~~[(q)]~~ “Persons and families of low income” means persons and families earning not more than 80 percent of the area median income, as determined under Section 3.13 of this article ~~[determined by the board to require assistance as is made available by this Act because of insufficient personal or family income taking into consideration, without limitation, such factors as:~~

~~[(1) the amount of the total income of such persons and families available for housing needs;~~

~~[(2) the size of the family;~~

~~[(3) the cost and condition of housing facilities available;~~

~~[(4) the ability of the persons and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and~~

~~[(5) standards established for various federal programs determining eligibility based on income].~~

(18) “Persons and families of very low income” means persons and families earning not more than 60 percent of the area median income, as determined under Section 3.13 of this article.

(19) “Person with special needs” means a person who:

(A) is considered to be disabled or handicapped under a state or federal law;

(B) is elderly;

(C) is designated by the board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) is legally responsible for caring for an individual described by Paragraph (A), (B), or (C) of this subdivision and meets the income guidelines established by the board.

(20) ~~[(r)]~~ “Family of moderate income” means a family:

(A) ~~[(+)]~~ that is determined by the board to require assistance, taking into account the following factors:

~~(i) the amount of the total income of such persons and families available for housing needs;~~

~~(ii) the size of the family;~~

~~(iii) the cost and condition of housing facilities available;~~

~~(iv) the ability of the persons and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and~~

~~(v) standards established for various federal programs determining eligibility based on income [listed in Subdivision (q) of this section]; and~~

(B) ~~[(2)]~~ that does not qualify as a family of low income.

(21) ~~[(s)]~~ “Public agency” means any board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of the state including, without limitation, any county, home-rule charter city, general-law city, town, or village, any housing authority, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewerage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the state.

(22) “Real estate owned contractor” means a person required to perform the responsibilities in a contract with the housing finance division for managing and marketing foreclosed property under programs of the division.

(23) [(t)] "Real property" means all land, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including leasehold interests, terms for years, and liens by way of judgment, mortgage, or otherwise.

(24) [(t)] "Reserve fund" means the Texas Department of Housing and Community Affairs—Housing Finance Division [Agency] Reserve Fund which may be created pursuant to this article [Act] and which may be established by the housing finance division [agency] with the State Treasurer of the State of Texas out of proceeds from the sale of the housing finance division's [agency's] bonds or other resources, as additional security for the housing finance division's [agency's] bonds.

(25) [(t)] "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodeling, improvement, or rehabilitation of land, buildings, and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(26) "Servicer" means a person required to perform responsibilities in a contract with the housing finance division or with a mortgage lender in relation to a loan financed under Part 3 of this article, including, but not limited to, purchasing mortgage certificates backed by mortgage loans, collecting principal and interest from the borrower, sending principal and interest payments to the division, preparing periodic reports, notifying the primary mortgage and pool insurers of delinquent and foreclosed loans, and filing insurance claims on foreclosed property.

(27) [(w)] "State" means the State of Texas.

(28) [(x)] "Economically depressed or blighted area" means: (i) an area that has been determined by the housing finance division [agency] to be a qualified census tract or an area of chronic economic distress pursuant to the requirements of Section 103A, Internal Revenue Code of 1954 (26 U.S.C. Section 103A), or (ii) an area established within a city that has a substantial number of substandard, slum, deteriorated, or deteriorating structures, that suffers from a high relative rate of unemployment, or (iii) that has been designed and included in a tax increment district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes). To establish an economically depressed or blighted area, pursuant to the provisions of (ii) or (iii) of this subsection, the governing body of the city must hold a public hearing and find that the area substantially impairs or arrests the sound growth of the city, or that it constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. The governing body of a city holding such a hearing must give notice as provided by Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), except that notice must be published not less than 10 days before the day of the hearing.

(29) [(y)] "Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.

(30) [(z)] "Elderly individual" means an individual 60 years of age or older. (part from Section 2(1)-(3), Article 4413(201), Vernon's Texas Civil Statutes; part from Sections 2(a)-(z), Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 1.03 [3]. CREATION. There is [hereby] established a Texas Department of Housing and Community Affairs. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.04 [3a]. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to ~~[the Texas Sunset Act-]~~ Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter [Act], the department is abolished and this article [Act] expires September 1, 2003 ~~[September 1, 1995]~~. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.05 [5]. APPOINTMENT AND REMOVAL OF MEMBERS OF THE BOARD ~~[DIRECTORS]~~. (a) The board ~~has [of directors of the agency which is and constitutes a "board" of the state, within the meaning of Article XVI, Section 30a, of the Texas Constitution and which shall have]~~ such powers and duties as are prescribed in this article and ~~consists [Act shall consist]~~ of nine members~~[-entitled directors]~~. Each member ~~[director]~~ occupies one of the nine places on the board designated as Places 1 through 9.

(b) The nine regular members ~~[directors]~~ shall be appointed by the governor with the advice and consent of the senate.

(c) Members ~~[Except for the initial appointees, directors]~~ hold office for staggered terms of six years, with the terms of three members ~~[directors]~~ expiring on January 31 of each odd-numbered year. Each member ~~[director]~~ shall hold office until a successor is appointed and has qualified.

(d) ~~[The directors initially appointed to occupy Places 1, 4, and 7 shall serve terms expiring on January 31, 1981. The directors initially appointed to occupy Places 2, 5, and 8 shall serve terms expiring on January 31, 1983. The directors initially appointed to occupy Places 3, 6, and 9 shall serve terms expiring on January 31, 1985.]~~

~~[(e)]~~ Each member ~~[director]~~ is eligible for reappointment.

~~[(f)]~~ Any vacancy on the board is filled by appointment by the governor with the advice and consent of the senate. A vacancy, except for expiration of term, is filled for the unexpired term only. If a vacancy occurs while the senate is not in session, the governor may make the appointment subject to confirmation by the senate when convened.

~~[(f)]~~ ~~[(g)]~~ To be eligible for appointment ~~[as a director]~~, a person must be a qualified voter of the state and, ~~except as to Place 2, may not hold any other public office. Members of the board must be persons who broadly reflect the economic, cultural, and social diversity of the state, including ethnic minorities and women. The governor shall make appointments as follows [so that the places on the board are occupied by persons having the following experience]:~~

~~(1) Place 1—a person representing lending institutions [with experience in housing development administration];~~

~~(2) Place 2—a person representing local government [with experience in commercial banking];~~

~~(3) Place 3—a person representing housing construction [with experience in real estate operations];~~

~~(4) Place 4—a person representing community based nonprofit housing organizations [with experience in home building];~~

~~(5) Place 5—a person representing realtors or housing developers [with experience in apartment construction or ownership];~~

~~(6) Place 6—a person representing persons and families of low or very low income [with experience in mortgage banking];~~

~~(7) Place 7—a public member [person with experience in savings and loan operations];~~

~~(8) Place 8—a public member [person with experience in municipal or county government];~~

~~(9) Place 9—a public member [person with experience in housing problems of persons and families of low income and families of moderate income].~~

(g) Except as necessary to comply with the requirements of Subsection (f) of this section regarding diversity, appointments [Sec. 6. ADVISORY COUNCIL ON COMMUNITY AFFAIRS. (a) There is hereby established in the Department of Community Affairs an Advisory Council on Community Affairs, which shall consist of twelve (12) members appointed by the Governor with the advice and consent of the Senate, as follows:

[(1) three (3) members must be elected or appointed municipal officials who serve in different municipalities;

[(2) three (3) members must be elected county officials who serve in different counties;

[(3) three (3) members must be elected or appointed officials of other kinds of political subdivisions who serve in different political subdivisions; and

[(4) three (3) members must be citizen members who are not elected or appointed officials of any political subdivision.

[(b) Appointments] to the board [advisory council] shall be made without regard to the race, color, handicap [creed], sex, religion, age, or national origin of the appointees and shall be made in a manner that produces representation on the board [advisory council] of the different geographical regions of the state.

[(h) An [(c) Any] elected or appointed official of a [any] political subdivision who shall be appointed to Place 2 on the board [as a member of the advisory council or as a member of any special advisory council as provided for in Section 7 of this Act] shall perform [his] duties as a member of the board [such advisory council or councils] as an additional or ex officio duty required by the member's [of him in his] other official capacity, and such service on the board [such advisory council or councils] shall not be construed as dual office holding.

[(i) [(d) Members are appointed to the advisory council for staggered terms of two (2) years with six (6) members' terms expiring January 31 of each year. Vacancies on the advisory council, other than by expiration of terms of office, shall be filled for the unexpired term.

[(e) The governor [advisory council annually] shall appoint [elect] a chairman [and a vice-chairman] from among the board [its] members. The chairman presides at meetings of the board and performs other duties required by this article.

[(j) [(f) All members of the board [advisory council] shall serve without compensation but shall be reimbursed for their actual expenses in attending the meetings of the board [advisory council] and in the performance of their other duties.

[(k) [(g) It is a ground for removal from the board [advisory council] that a member:

(1) does not have at the time of appointment the qualifications required by [Subsection (a) of] this section or Section 1.08 of this article for appointment to the board [advisory council]; [or]

(2) does not maintain during the service on the board [advisory council] the qualifications required by [Subsection (a) of] this section or Section 1.08 of this article for appointment to the board [advisory council];

(3) violates a prohibition established by Section 1.10 or 1.11 of this article;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled meetings of the board that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(l) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a member exists.

(m) If the director has knowledge that a potential ground for removal exists, the director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

(n) [(th)] It shall be the duty of the board [advisory council] to consult with and advise the director with respect to the affairs and problems of local government and work of the department. The board [advisory council] shall meet at least three times annually at the call of the chairman [director] and at such other times as the board [advisory council] shall determine, the time and place of such other meetings to be fixed by majority vote [resolution] of the board [advisory council]. It shall be the responsibility of the department to furnish such information, equipment and staff as is necessary to implement the work of the board [advisory council] within the limits of appropriations for the purpose]. (part from Section 5, Article 1269I-6, Vernon's Texas Civil Statutes; part from Section 6, Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.06 [6]. GENERAL PROVISIONS RELATING TO THE BOARD.

(a) [The directors do not receive any compensation but each director is entitled to reimbursement for actual expenses incurred in performing duties of office to the extent authorized by the board.]

[(b)] The board shall employ an executive administrator of the agency. The administrator may attend all meetings and participate in all proceedings of the board, but may not vote.

[(c)] The governor shall designate a chairman of the board from among the directors. A director holds the position of chairman at the pleasure of the governor. The chairman shall preside at meetings of the board and perform such other duties as are prescribed by the board and this Act.

[(d)] The board shall elect one of the members [directors] as vice-chairman to perform the duties of the chairman when the chairman is not present or is incapable of performing duties. The board shall elect a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties as prescribed by the board. The board shall elect a treasurer to perform duties prescribed by the board. The offices of secretary and treasurer may be held by one person, and the holder of each of these offices need not be a member [director]. The board may appoint one or more persons who are not members [directors] to be assistant secretaries who may perform any duty of the secretary. The board may hold special meetings when called by the chairman, the director, or three of the members.

[(b) [(e)]] A majority of the regular members of the board [of directors] constitutes a quorum. [The board shall act and proceed by and through resolutions adopted by the board. The affirmative vote of at least five directors is necessary to adopt a resolution.]

[(c) [(f)]] The vice-chairman, secretary, and treasurer of the board shall be elected at the first meeting of the board after all members [directors] shall have been appointed, taken the oath required by Article XVI, Section 1, of the Texas Constitution, and otherwise qualified for office. Thereafter, officers of the board shall be elected at the first meeting of the board on or following January 31 of each odd-numbered year, or at any time necessary to fill a vacancy.

[(d)] The board shall keep complete minutes of its meetings. The accounts, minutes, and other records shall be kept at the principal office of the department.

[(g)] The board shall hold regular meetings at times specified by resolution of the board and may hold special meetings when called by the chairman, the administrator, or three of the directors.]

[(e) [(h)]] Prior to the issuance of bonds, each member [director] shall execute a surety bond in the penal sum of \$25,000, conditioned on the faithful performance of the duties of the member [director], executed by a surety company authorized

to transact business in this state, approved by the attorney general, and filed with the secretary of state. The surety bonds shall be kept in force at all times thereafter and the costs shall be paid by the housing finance division [agency].

(f) ~~(f)~~ A member [director, chairman] of the board~~;~~ or the director ~~[administrator]~~ is not liable personally for any bonds issued or contracts executed by the housing finance division [agency]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 1.07. GENERAL POWERS OF THE DEPARTMENT. The department is hereby granted, has, and may exercise all powers necessary or appropriate to carry out, achieve, or effectuate the purposes of this article, including, without limitation, the following powers:

(1) to sue and be sued, and plead and be impleaded, in the name of the department; and it is specifically enacted that the department is and constitutes a separate governmental agency and a body politic and corporate of this state, acting for and on behalf of this state;

(2) to adopt an official seal and alter same when deemed advisable;

(3) to adopt and enforce bylaws and rules for the conduct of its affairs not inconsistent with bylaws and this article;

(4) to maintain an office or offices throughout the state and appoint and determine the duties, tenure, qualifications, and compensation of its agents, professional advisors, and counselors, including, without limitation, financial consultants, accountants, architects, engineers, real estate consultants, appraisers, housing construction and financing experts, as are determined necessary or advisable;

(5) to make, enter into, and enforce contracts and agreements with the federal government, the state, any public agency, or any person, firm, corporation, or other entity in performing its duties and exercising its powers under this article; to make and enter into all contracts, agreements, and other arrangements with mortgage lenders; to designate mortgage lenders to act for and in behalf of the department, with respect to originating, servicing, and processing mortgage loans of the department, under the terms and conditions agreed on between the parties; and to provide, contract, or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication;

(6) to do anything authorized by this article or by contracts with the federal government, the state, any public agency, or any person, firm, corporation, or other entity;

(7) to do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this article; and

(8) to encourage homeless persons and persons of low and very low income to attend educational programs of the department and assist homeless persons and persons of low and very low income in attending the programs.

Sec. 1.08. PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for department membership, attendance, or expenses. (new)

Sec. 1.09 [5]. PERSONNEL. (a) The administrator and head of the department shall be known as the executive director and shall be a person qualified

by training and experience to perform the duties of the [his] office. The director shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's terms of office. The director [He] shall receive a salary as provided by the Governor within authorized appropriations. The director, as head of the department, shall:

- (1) administer the work of the department;
- (2) appoint and remove officers and other personnel employed within the department subject to the annual budget and the provisions of any resolution authorizing the issuance of bonds under this article;
- (3) submit through and with the approval of the Governor requests for appropriations and other moneys to operate the department;
- (4) administer all moneys entrusted to the department;
- (5) organize the work of the department consistent with this article [Act] and with sound organizational management designed to promote efficient and effective operation;
- (6) make an annual report to the Governor and the Legislature of the department's operations and provide such other reports as the Governor or the Legislature shall require;
- (7) perform such other functions as may be prescribed by law or assigned by the Governor.

(b) The director or the director's [his] designee shall develop an intraagency career ladder program. The program shall require intraagency postings[, one part of which shall be the intraagency posting] of all nonentry level positions concurrently with [for at least ten (10) days before] any public posting.

(c) The director or the director's [his] designee shall develop a system of annual performance evaluations [based on measurable job tasks]. All merit pay for department employees must be based on the system established under this subsection.

(d) [(c)] The director or the director's [his] designee shall prepare and maintain a written policy statement [plan] to assure implementation of a program of equal employment opportunity under which [whereby] all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must [plans shall] include:

- (1) a comprehensive analysis of [all] the department [agency's] work force that meets federal and state guidelines [by race, sex, ethnic origin, class of position, and salary or wage];
- (2) personnel policies, including policies relating to [plans for] recruitment, evaluation, selection, appointment, training, and promotion of personnel[, and other personnel policies];
- (3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance [steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's work force]; and

(4) reasonable methods to appropriately address those areas of significant underuse [objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement].

(e) A policy statement prepared under Subsection (d) must cover an annual period, be updated at least annually, and be filed with the Governor's office.

(f) The Governor's office shall deliver a biennial report to the Legislature based on the information received under Subsection (e). The report may be made separately or as a part of other biennial reports made to the Legislature [The plans shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. Progress reports shall

be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements].

(g) The director shall develop and implement policies established by the board to define the respective responsibilities of the director, board, and staff of the department and the respective responsibilities of the community affairs division, the housing finance division, and any other division.

(h) The director shall become aware of and shall provide to the board members and the department employees, as often as necessary, information regarding the director's, members', and employees' qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.10. RESTRICTION. (a) An employee or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction may not be a member of the board or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (new)

Sec. 1.11 [5a]. LOBBYIST RESTRICTION. A person may not serve as a member of the board or act as the director of or the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's [who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of his] activities for compensation in or on behalf of a profession related to the operation of the department [may not serve as the director or act as the general counsel to the department]. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.12 [5b]. OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE. The department is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.13 [8]. ACTING DIRECTOR. The Governor shall establish a procedure for designation of an acting director in the event of an absence or disability of the director and shall immediately designate an acting director or a new permanent director in the event of a vacancy in the position. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.14 [9]. OFFICES AND DIVISIONS. (a) There shall be established in the department: [The director shall establish]

(1) a community affairs division;

(2) a housing finance division; and

(3) any other division established by the director to carry out the duties of the department.

(b) The duties of the housing finance division shall be kept separate and distinct from the duties of the community affairs division and any other division established in the department. The funds and revenues of the housing finance division shall be

kept separate from the funds and revenues of the community affairs division and any other division, and the community affairs division or any other division may not use funds or revenues of the housing finance division for any purpose. Except for legislative appropriations, all funds and revenue received by the housing finance division are to be kept outside the state treasury. Legislative appropriations to the housing finance division are to be deposited in the state treasury.

(c) In the community affairs division, the director may establish such offices [and divisions] as are necessary to carry out the functions of the department relating to community affairs, and these functions shall include: intergovernmental cooperation, regional and community services, rural community services, [housing,] research, economic opportunity, and education and training.

(d) The director is authorized to assign functions and duties to the various offices and divisions, to provide for additional offices ~~[and divisions]~~, and to reorganize the department when necessary to improve efficiency or effectiveness.

(e) The director may ~~[is further authorized to]~~ enter into reciprocal agreements to loan or detail department employees to State agencies and instrumentalities and to local governments.

(f) The department shall maintain suitable headquarters for the department and such other quarters as the director shall deem necessary to the proper functioning of the department. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.15 [††]. LOANED EMPLOYEES. Agencies and instrumentalities of the State government and local governmental units are authorized to detail or loan employees to the department on either a reimbursable or nonreimbursable basis as may be mutually agreed by the State agency or local governmental unit and the department. The department is authorized to accept such employees. During the period of loan or detail, the person shall continue to be an employee of the lending agency or unit for purposes of salary, leave, retirement, and other personnel benefits, but shall work under the supervision of personnel of the department and shall be an employee of the department for all other purposes. The department is authorized to enter into contracts with State agencies or other governmental units for reimbursing all costs incidental to the loaning or detailing of employees. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.16 [†‡]. AGENCY COOPERATION. Agencies and institutions of the State are directed to cooperate with the department through provision of personnel, information, and technical advice as the department assists the Governor in the coordination of federal and State activities affecting local government and in providing affordable housing to persons and families of low and very low income and families of moderate income. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.17 [†‡]. FUNDS. The department is authorized to request, apply for, contract for, receive, accept, and expend for its purposes any appropriations, [or] grants, allocations, subsidies, rent supplements, guaranties, aid, contributions, services, labor, materials, gifts, or donations from the State of Texas, the federal government, or any other source, public or private. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.18 [†‡b]. GENERAL INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public ~~[general]~~ interest describing the functions of the department and ~~[describing]~~ the ~~[department's]~~ procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the ~~[general]~~ public and appropriate state agencies.

(b) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve ~~[relating to an activity of the department].~~

(c) If a written complaint is filed with the department that the department has authority to resolve [relating to an activity of the department], the department, at least [as frequently as] quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(e) The director shall prepare and maintain a written plan that describes how a person who does not speak English, or who has a physical, mental, or developmental disability may be provided reasonable access to and participation in the department's programs. (from Article 4413(201), Vernon's Texas Civil Statutes)

[Sec. 13c. AUDITS. The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.] (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 1.19 [47]. FISCAL YEAR; ANNUAL REPORT; AUDIT; BUDGET OVERSIGHT. (a) The department [agency] shall operate on a fiscal year beginning September 1 and ending August 31. The department [agency] shall have an audit of its books and accounts for each fiscal year by the state auditor or by a certified public accountant. The cost of the audit is an expense of the department [agency]. A copy of the audit shall be filed with the governor and the legislature on or before January 1 of each year, except if the audit is being made by the state auditor and is not available by January 1, it shall be filed as soon as it is available. Also, on or before January 1 of each year, the department [agency] shall prepare a report of its activities for the preceding fiscal year for the governor and the legislature. The report shall set forth a complete operating and financial statement.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act. (from Article 12691-6, Vernon's Texas Civil Statutes)

(c) In preparing the department's legislative appropriations request, the department shall also prepare an operating budget for the housing finance division and submit the operating budget to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee.

Sec. 1.20. INTERNAL AUDIT. (a) The executive director, with the approval of the board, shall appoint an internal auditor who reports directly to the board on housing finance matters and on community affairs division matters or any other division matters.

(b) The internal auditor shall prepare an annual audit plan, prepared using risk assessment techniques that rank high risk functions in the department. The internal auditor shall submit the plan to the executive director and board for consideration and approval of the audit plan or change as is necessary or advisable.

(c) The internal auditor shall be given unrestricted access to activities and records of the department unless restricted by law.

(d) The internal auditor may bring before the executive director and board an issue outside the annual audit plan that requires the immediate attention of the director or board.

(e) The internal auditor may not be assigned any operational or management responsibilities that would impair the ability of the internal auditor to make an independent examination of the department's operations. (new)

Sec. 1.21. OUTSIDE LEGAL COUNSEL. The department shall follow the requirements for hiring outside legal counsel that are set out in the General

Appropriations Act or in other law. Before the department requests approval to hire outside legal counsel from the attorney general, the department must obtain and evaluate information regarding the affirmative action policies and practices of proposed legal counsel. The evaluation must be included by the department in any request made to the attorney general for outside legal counsel.

Sec. 1.22. TAXES. The property of the department, its income, and operations are exempt from all taxes and assessments imposed by the state and all public agencies on property acquired or used by the department under the provisions of this article.

Part 2. Community Affairs Division

Sec. 2.01 [4]. FUNCTIONS. (a) The department shall, through the community affairs division, and in addition to other powers and duties invested in it by this article [Act] or by any other law:

(1) maintain communications with local governments and serve as their advocate at the State and federal levels;

(2) assist local governments with advisory and technical services;

(3) provide financial aid to local governments and combinations of local governments for programs which are authorized such assistance;

(4) act as an information center and referral agency for information on State and federal services and programs affecting local government;

(5) administer, conduct, or jointly sponsor educational and training programs for local government officials;

(6) ~~maintain suitable headquarters for the department and such other quarters as the director shall deem necessary to the proper functioning of the department;~~

[7] conduct research on problems of general concern to local governments;

(7) ~~(8)~~ collect, publish, and disseminate information useful to local government including, but not limited to, data on local governmental finances and employment, housing, population characteristics, and land use patterns;

(8) ~~(9)~~ encourage cooperative action by local governments where appropriate;

(9) ~~(10)~~ advise and inform the Governor and the Legislature concerning the affairs of local government and make recommendations for necessary action;

(10) ~~(11)~~ assist the Governor in the coordination of federal and State activities affecting local governments;

(11) ~~(12)~~ administer, as appropriate, State responsibilities for programs created under the Federal Economic Opportunity Act of 1964, any programs which may be assigned to the department [agency] in accordance with the Omnibus Budget Reconciliation Act of 1981, and other federal acts creating economic opportunity programs assigned to the department;

(12) ~~(13)~~ promulgate and adopt such rules and regulations as may be necessary and proper to carry out programs and responsibilities assigned by the Legislature or the Governor; and

(13) ~~(14)~~ perform any other duties concerning local government which may be assigned by the Legislature or the Governor.

(b) By action of the board the community affairs division shall have a goal to apply at least 25 percent of the division's total housing related funds to provide housing assistance for persons and families of very low income. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 2.02 [7]. SPECIAL ADVISORY COUNCILS. The Governor may, with the advice of the director, from time to time appoint other special advisory councils to assist the board in basic policy formulation for the community affairs division

[department] or to advise on technical aspects of certain programs the community affairs division [department] may administer. Special advisory councils are dissolved automatically on completion of the council's stated purpose unless continued by order of the governor [Special advisory councils may be dissolved by the Governor upon completion of their purpose]. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 2.03 [10]. TRANSFERS FROM GOVERNOR. The Governor is [hereby] authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the Division of State-Local Relations and of other appropriate divisions of the Governor's [his] office to the community affairs division [department]. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 2.04 [13a]. MULTIPURPOSE HUMAN RESOURCE CENTERS. (a) In order to provide for the most effective and efficient delivery of human resource services to persons and families of low income [the poor population], as well as the total population, the department may, through the community affairs division, [Texas Department of Community Affairs may] establish multipurpose human resource centers in various communities in the State.

(b) The department may, through the community affairs division, locate and lease with State funds suitable office space at the community level that is easily accessible to the client populations of human resource service delivery agencies and may make it available to these agencies.

(c) Any State or local governmental agency or private, nonprofit human resource agency that has filed a State or regional plan for delivery of human resource services with the State is eligible to locate staff in a community multipurpose human resource service center.

(d) The department shall report to the Governor and the Legislature annually the agencies which are and the agencies which are not locating their human resource delivery staff in available community multipurpose human resource service centers.

(e) There is [hereby] established in the State Treasury the Community Multipurpose Human Resource Service Center Fund. The fund shall be used to provide the State's share of the rental costs for the community multipurpose human resource service centers and to provide for the administrative costs of their operation. (from Article 4413(201), Vernon's Texas Civil Statutes)

Sec. 2.05 [13d]. ENERGY SERVICES PROGRAM FOR LOW-INCOME PEOPLE. [(a)] There is [hereby] created within the community affairs division [department] an office, to operate in conjunction with the community service block grant program, to be known as the Energy Services Program for Low-Income People having jurisdiction and responsibility for administration of the following elements of the State Low-Income Energy Assistance Program:

(1) the Energy Crisis Intervention Program, from whatever sources funded; and

(2) the weatherization program, from whatever sources funded.

[(b) Appropriations made in S.B. 179, 68th Legislature, Regular Session, to the Department of Human Resources for these programs are hereby appropriated to the Texas Department of Community Affairs.] (from Article 4413(201), Vernon's Texas Civil Statutes)

[Sec. 14. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.] (from Article 4413(201), Vernon's Texas Civil Statutes)

Part 3. Housing Finance Division

Sec. 3.01 [3]. CREATION OF THE [AGENCY] HOUSING FINANCE DIVISION. (a) There is [~~hereby created and~~] established in the department a

housing finance division [a public and official governmental agency of the state, to be known as the Texas Housing Agency, and the state shall act by and through the agency in carrying out all powers and duties conferred by this Act. The exercise by the agency of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public and official governmental function and purpose of the state, acting by and through the agency, in promoting the general welfare and prosperity of the state and all of its citizens].

(b) The housing finance division shall adopt a goal to apply a minimum of 25 percent of the division's total housing funds to provide housing assistance for persons and families of very low income. [The agency is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the agency is abolished and this Act expires September 1, 1991.] (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.02 [7]. POWERS OF THE BOARD RELATING TO THE HOUSING FINANCE DIVISION [ADMINISTRATOR AND THE BOARD]. [(a) The administrator of the agency shall exercise and perform all powers, duties, and functions prescribed by this Act, except those prescribed in Subsection (b) of this section or otherwise required to be exercised by the board. The administrator, with the advice and consent of the board, shall appoint a deputy administrator of the agency. The administrator may employ any other employees necessary for the discharge of the duties of the agency, in such number and for such time as may be necessary for the performance of such duties and functions and to remove same, subject to the annual budget and the provisions of any resolution authorizing the issuance of the agency's bonds.

[(b)] The board shall have the following specific duties and powers, in addition to any other specific duties and powers assigned to the board in this article [Act]:

(1) in its discretion, authorize all bonds issued under this part [of the agency];

(2) make rules, not inconsistent with this article [Act], governing the administration of the housing finance division [agency] and its programs;

(3) adopt procedures for approving loans, purchases of loans and interests in loans, and commitments to purchase loans under this article [Act];

(4) adopt underwriting standards for loans made or financed [purchased] by the housing finance division [agency];

(5) adopt minimum property standards for housing developments financed or acquired under this article [Act];

(6) establish interest rates and amortization schedules for loans made or financed under this part or article [purchased by the agency];

(7) establish a schedule of fees and penalties authorized by this part [Act], including but not limited to application, processing, loan commitment, origination, servicing, and administrative fees;

(8) establish eligibility criteria for persons and families of low and very low income and families of moderate income to participate in and benefit from the housing finance division's [agency's] programs;

(9) compile a list of approved mortgage lenders;

(10) approve an annual report of the housing finance division [agency]; [and]

(11) approve an annual budget pursuant to Section 3.05 [18] of this article [Act]; and

(12) adopt a target strategy for the percentage of mortgage revenue bond proceeds to be made available to persons and families of low and very low income. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.03 [8]. GENERAL POWERS OF THE DEPARTMENT RELATING TO THE HOUSING FINANCE DIVISION [AGENCY]. [(a) The

department [agency] is hereby granted, has, and may exercise all powers necessary or appropriate to carry out, achieve, or effectuate the division's purposes [of this Act], including, without limitation, the following powers:

(1) [to sue and be sued, and plead and be impleaded, in its own name; and it is specifically enacted that the agency is and constitutes a separate governmental agency and a body politic and corporate of this state, acting for and on behalf of this state;

[(2) to adopt an official seal and alter same when deemed advisable;

[(3) to adopt and enforce bylaws and rules for the conduct of its affairs not inconsistent with bylaws and this Act;

[(4)] to acquire, hold, invest, deposit, use and dispose of its revenues, income, receipts, funds, and money from every source and to select its depository or depositories, subject only to the provisions of this article [Act] and any covenants with respect to the department's [agency's] bonds issued under this part;

(2) [(5)] to acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest therein, in performing its duties and exercising its powers under this article [Act], by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise, including rights or easements and to hold, manage, operate, or improve real, personal, or mixed property, except that:

(A) the department is restricted in the acquisition of property under Section 3.16 of this article unless the department must foreclose on a delinquent loan and elects to acquire the property at foreclosure [agency may not construct or acquire any housing development unless acquired through foreclosure of mortgages or sales under deeds of trust];

(B) the department [agency] shall make a diligent effort to sell a housing development [so] acquired through foreclosure to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to any other purchaser; and

(C) in any event the department [agency] shall sell a housing development [so] acquired through foreclosure within three years after the date of acquisition unless the board adopts a resolution stating that a purchaser for the housing development cannot be found after diligent search by the housing finance division [agency], in which case the department [agency] shall continue to try to find a purchaser and shall sell the housing development when a purchaser is found;

(3) [(6)] to sell, assign, lease, encumber, mortgage, or otherwise dispose of any real, personal, or mixed property, or any interest therein, or any deed of trust or mortgage lien interest owned by it or under its control, custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it, and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law; and to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities from private parties to effectuate the housing finance division's purposes [of this Act];

(4) [(7)] to request and accept any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contributions, services, labor, materials, gifts, or donations from the federal government, the state, any public agency, or any other sources;

[(8) to maintain an office or offices throughout the state and appoint and determine the duties, tenure, qualifications, and compensation of its officers, employees, agents, professional advisors, and counselors, including, without limitation, financial consultants, accountants, attorneys, architects, engineers, real

estate consultants, appraisers, housing construction and financing experts, as are determined necessary or advisable; it is the intention of this Act that the programs of the agency be coordinated with the programs of the Texas Department of Community Affairs with respect to their design and implementation in order to avoid duplication of governmental housing programs;

~~[(9) to make, enter into, and enforce contracts and agreements with the federal government, the state, any public agency, or any person, firm, corporation, or other entity in performing its duties and exercising its powers under this Act; to make and enter into all contracts, agreements, and other arrangements with mortgage lenders; to designate mortgage lenders to act for and in behalf of the agency, with respect to originating, servicing, and processing mortgage loans of the agency, under the terms and conditions agreed on between the parties; and to provide, contract, or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication;~~

~~[(10) to issue the [its] bonds of the department under the provisions of this article, to provide for and secure the payment of the bonds, and to provide for the rights of the holders of the bonds, in the manner and to the extent permitted by this article [Act] and the Texas Constitution; and to purchase, hold, cancel, or resell or otherwise dispose of any of its bonds, subject to any restrictions in any resolution authorizing the issuance of its bonds; and in connection with or incidental to the issuance and sale of its bonds, to enter into any contracts which the board deems to be necessary or appropriate to place the obligation of the department [agency], as represented by the bonds and the contract or contracts, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board, including, without limitation, contracts commonly known as interest rate swap agreements, currency swap agreements, forward payment conversion agreements, or contracts providing for payments based on levels of or changes in interest rates or currency exchange rates, or contracts to exchange cash flows or a series of payments, or contracts including, without limitation, options, puts or calls to hedge payment, currency, rate, spread, or similar exposure, all upon such terms and conditions as may be approved by the board;~~

~~(5) [(11) to fix, charge, and collect fees and charges in connection with loans made or other services provided by the department [agency] pursuant to this article [Act];~~

~~(6) [(12) to do anything authorized by this Act, through its directors, officers, or employees, or by contracts with the federal government, the state, any public agency, or any person, firm, corporation, or other entity;~~

~~[(13) to invest its money in any bonds, obligations, or other securities or place such money in demand or time deposits, whether or not evidenced by certificates of deposit unless otherwise provided by this article [Act] or a resolution authorizing the issuance of its bonds;~~

~~(7) [(14) to do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this Act;~~

~~[(15) to conduct hearings and to take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the housing finance division's purposes [of this Act];~~

~~(8) [(16) to procure and pay premiums on insurance of any type whatsoever, in amounts and from insurers as the board deems necessary or advisable;~~

~~(9) [(17) to encourage individual or cooperative home ownership among persons and families of low and very low income and families of moderate income in this state; and]~~

~~(10) [(18) to investigate housing conditions and the means for improving those conditions and determine where slum or blighted areas exist; and]~~

(11) ~~[(19)] to [The Texas Housing Agency may]~~ target the proceeds from housing bonds issued by it to any geographic area or areas of the state ~~and~~ ~~[- The Texas Housing Agency is also authorized]~~ to make loans to mortgage lenders, ~~[or to]~~ public agencies, or other housing sponsors, the proceeds of which will be used to make loans for multifamily housing developments which will be substantially occupied by persons and families of low and very low income or families of moderate income;

(12) adopt a strategy to serve the needs of persons with special needs;
and

(13) adopt a target strategy to ensure that the credit and housing needs of qualifying persons and families who reside in rural areas and small cities are equitably served by the housing finance division. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.04. GENERAL DUTIES OF THE DEPARTMENT RELATING TO PURPOSES OF THE HOUSING FINANCE DIVISION. The department shall:

(1) develop policies and programs designed to increase the number of persons and families of low and very low income that participate in the programs of the division;

(2) work with municipalities, public agencies, housing sponsors, and nonprofit corporations to provide information on division programs and to provide technical assistance to municipalities and nonprofit corporations;

(3) encourage private and nonprofit corporations and state organizations to match funds of the division to assist in providing affordable housing to persons and families of low and very low income and families of moderate income; and

(4) provide matching funds to municipalities, public agencies, housing sponsors, and nonprofit developers who qualify under programs of the division. (new)

Sec. 3.05 [18]. ANNUAL BUDGET. (a) On or before August 1 of each year, the director [administrator] shall file with the board a proposed annual budget for the housing finance division for the succeeding fiscal year. The budget shall set forth the general categories of expected expenditures out of revenues and income of the housing finance division [agency], and the amount on account of each, and may include a provision or reserve for contingencies or over expenditures. The budget must include a statement of expected operating expenses of the housing finance division and the proposed use of projected year end unencumbered fund balances.

(b) On or before September 1 in each year, the board shall consider the proposed annual budget and shall approve it or change it as the board determines necessary or advisable. Copies of the annual budget certified by the chairman of the board shall be filed promptly with the governor and the legislature. The annual budget is not effective until it is filed.

(c) [(b)] If for any reason the board [agency] does not adopt the annual budget before September 2, the budget for the preceding year shall remain in effect until a new budget is adopted.

(d) [(c)] The board [agency] may adopt an amended annual budget for the current fiscal year, but the amended annual budget may not supersede a prior budget until it is filed with the governor and the legislature.

(e) [(d)] All expenses incurred in carrying out the functions of the housing finance division [provisions of the Act] shall be payable solely from revenues or funds provided or to be provided pursuant to the provisions of this article [Act], and nothing in this article [Act] shall be construed to authorize the housing finance division [agency] to incur any indebtedness or liability on behalf of or payable by the State of Texas, except as provided in this article [Act], or as otherwise provided by law. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.06 [†9]. SELECTION OF DEPOSITORY. (a) Except as provided by Subsection (e) of this section, all revenue and funds of the department received by or payable through the programs and functions of the housing finance division, other than funds necessary for the operation of the housing finance division and appropriated funds, shall be deposited outside the treasury with the Texas Treasury Safekeeping Trust Company.

(b) The department [agency] shall choose a depository for the [its] operating [revenues and] funds of the housing finance division[, other than appropriated funds,] after inviting bids for favorable interest rates. The housing finance division [agency] shall publish notice in at least one newspaper of general circulation in the state at least 14 days before the last day set for the receipt of the bids. The notice shall state the types of deposits planned, the last day on which bids will be received, and the time and place for opening bids.

(c) [(b)] Sealed bids that are identified as bids on the envelope must be submitted to the housing finance division [agency] before the deadline for receiving bids. The housing finance division [agency] shall provide a tabulation of all submitted bids for public inspection.

(d) [(c)] The department [agency] shall choose the depository submitting the bid with the most favorable financial terms to the department, taking into account the security and efficiency with which the depository is capable of managing the funds of the department [interest rate].

(e) [(d)] If covenants related to the department's [agency's] bonds or the trust indentures governing the bonds specify one or more depositories or set out a method of selecting depositories different from the method prescribed by this section, the covenants prevail with respect to the funds to which they apply and the funds are not required to be deposited with the Texas Treasury Safekeeping Trust Company. Bonds of the housing finance division issued under trust indentures executed or resolutions adopted on or after September 1, 1991, may not include a covenant that interferes with the deposit of funds in the Texas Treasury Safekeeping Trust Company. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.07 [20]. HOUSING FINANCE DIVISION [AGENCY] RECORDS. [(a)] The housing finance division [agency] shall keep complete records and accounts of its business transactions according to generally accepted methods of accounting.

[(b)] The agency shall keep complete minutes of its meetings. The agency accounts, minutes, and other records shall be kept at its principal office.] (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.08. ANNUAL REPORT. (a) The housing finance division shall examine the ethnicity and income of applicants and recipients under housing finance division programs and shall examine the amount funded for and the geographic location of housing units assisted by programs of the housing finance division.

(b) Subsection (a) of this section does not require a borrower to disclose the borrower's race or ethnicity if that information is protected from disclosure under state or federal law.

(c) The department shall publish the findings made under this section in an annual report made to the board and made available to the general public. (new)

Sec. 3.09 [†6]. EXEMPTION FROM TAXATION. [The property of the agency, its income, and operations are exempt from all taxes and assessments imposed by the state and all public agencies on property acquired or used by the agency under the provisions of this Act.] The department [agency] may, under its terms, conditions, and rules, make payments to public agencies in lieu of ad valorem taxes on any property which the department [agency] has acquired through foreclosure or sale under a deed of trust. It shall be the policy of the department

[agency] to make these payments in lieu of taxes whenever practicable with any money lawfully available for this purpose, subject to the provisions, requirements, and restrictions of any bond resolution. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.10. AREA MEDIAN INCOME. The department may determine the median income of a person or family for an area by using any source or methodology acceptable under federal law or rule. (new)

Sec. 3.11 [9]. POWERS RELATIVE TO MAKING MORTGAGE LOANS AND CONSTRUCTION LOANS TO HOUSING SPONSORS. (a) In addition to all other powers, the department [agency] shall have the [following] specific powers provided by this section relating to housing developments.[:]

(b) [(a)] The department [agency] may make, undertake commitments to make, and participate in the making of mortgage loans, including, without limitation, federally insured mortgage loans, and/or make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and planned for persons and families of low and very low income and/or families of moderate income, upon the terms and conditions set forth in this article [Act].

(c) [(b)] The department [agency] may make and publish rules respecting making mortgage loans pursuant to this part [Act], the regulations of borrowers, the construction of ancillary commercial facilities, and resale and disposition of any real property, or any interest therein, financed by the department [agency].

(d) [(c)] The department [agency] may enter into agreements and contracts with housing sponsors and mortgage lenders under the provisions of this article [Act] with respect to making or participating in making mortgage loans for residential housing for persons and families of low and very low income and/or families of moderate income.

(e) [(d)] The department [agency] may institute any action or proceeding against any housing sponsor receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this article [Act], the terms and provisions of any agreement or contract between the department [agency] and such recipients of loans under the provisions hereof, including, without limitation, provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its mortgage, or to protect the public interest, persons and families of low and very low income or families of moderate income, stockholders, or creditors of the sponsor. In connection with any such action or proceeding the department [agency] may apply for the appointment of a trustee or receiver to take over, manage, operate, and maintain the affairs of a housing sponsor. The department [agency] through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.12 [+0]. LOAN TERMS AND CONDITIONS. (a) Loans financed through programs of [made-by] the housing finance division [agency] under the preceding section shall be subject to the [following] terms and conditions set out in this section.[:]

[(a)] The agency shall not process an application for a loan for a housing development unless the applicant is a housing sponsor and the application is submitted and recommended by a mortgage lender.[:]

(b) The ratio of loan to total housing development cost and the amortization period of loans financed [made] under this part [Act] which are insured or guaranteed by the federal government are governed by the federal government

mortgage insurance commitment or federal guarantee for each housing development, except the amortization period may not exceed 40 years.

(c) ~~[A mortgage loan not insured by the federal government may not exceed 95 percent of the total housing development cost as determined by the agency. The amortization period of the loan shall be determined in accordance with regulations formulated and published by the agency, except the amortization period may not exceed 40 years.~~

~~[(d)]~~ A mortgage loan made under this article [Act] may be prepaid to maturity after the period of years and under the terms and conditions decided upon by the board.

~~(d) [(e)]~~ The housing finance division [agency] may set the interest rates at which it makes loans and commitments therefor. The interest rates together with other available funds shall in the aggregate be established by the board in its sole discretion so as to produce at least the amounts required, together with other available funds, to pay for the housing finance division's [agency's] costs of operation and to meet its covenants with and responsibilities to the holders of its bonds. In addition to such interest charges the department [agency] shall make and collect such fees and charges, including but not limited to reimbursement of the housing finance division's [agency's] financing costs, service charges, insurance premiums, and mortgage insurance premiums, and administrative costs as the department [agency] determines to be reasonable.

~~(e) [(f)]~~ In considering an application for a loan, the agency shall give first priority to applications for well-planned and well-designed housing developments. The agency shall also give consideration to:

~~[(1)]~~ the comparative need for housing for persons and families of low income and families of moderate income in the area to be served by the proposed housing development;

~~[(2)]~~ the ability of the applicant to carry out, operate, manage, and maintain the proposed housing development;

~~[(3)]~~ the existence of zoning, protective covenants, or regulations that adequately protect the proposed housing development against detrimental future uses that could cause undue depreciation in the value of the housing development; and

~~[(4)]~~ the availability in urban areas of adequate parks, recreational areas, utilities, schools, transportation, and parking.

~~[(g)]~~ Each mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage or deed of trust that constitutes a lien on the housing development and on all the real property constituting the site of or relating to the housing development, and that contains provisions and is in a form satisfactory to ~~[required by]~~ the department [agency]. The note or bond and mortgage or deed of trust may contain exculpatory provisions relieving the borrower or its principal from personal liability if agreed upon by the department [agency].

~~(f) [(h)]~~ Each mortgage loan is subject to an agreement between the department [agency] and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the department [agency] as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and on all of the real property constituting the site of or relating to the housing development.

~~(g) [(i)]~~ As a condition of each loan, the department, acting through the housing finance division, [agency] may at any time during the construction, rehabilitation, or operation of a housing development:

~~(1)~~ enter upon and inspect the housing development, including all parts thereof, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management, and

maintenance and to examine all books and records with respect to capitalization, income, and other matters relating thereto and to make such charges as may be required to cover the cost of such inspections and examinations;

(2) order alterations, changes, or repairs necessary to protect the security of the department's [agency's] investment in a housing development or the health, safety, and welfare of the occupants; and

(3) order any managing agent, housing development manager, or owner of a housing development to do whatever is necessary to comply with the provisions of applicable laws, ordinances, or rules of the department [agency] or the terms of any agreement concerning the housing development or to refrain from doing any acts in violation thereof and in this regard the department [agency] shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein.

(h) ~~[(j)] A housing sponsor may not make distributions in any one year with respect to a housing development financed by the agency in excess of that which shall be prescribed by rules of the agency of the housing sponsor's equity in the development.~~ The principals or stockholders of a housing sponsor may not at any time earn, accept, or receive a return greater than that which shall be prescribed by rules of the department [agency] per annum of their investment in a housing development financed by the department [agency]. A housing sponsor's equity in a housing development consists of the difference between the mortgage loan and the total housing development cost. The department [agency] shall establish the sponsor's equity at the time of the making of the final mortgage advance and, for the purposes of this subsection, that figure remains constant during the life of the department's [agency's] mortgage or deed of trust on the development, except for additional equity investment made by the sponsor with the department's [agency's] approval or at its order. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.13 [10A]. HOUSING FOR PERSONS WITH SPECIAL NEEDS [ELDERLY]. (a) The board [agency] shall adopt rules to achieve occupancy of at least five percent of the units in a multifamily housing development by persons with special needs [elderly individuals of low income or by families of low or moderate income in which an elderly individual is head of the household]. This provision applies only to a multifamily housing development that contains at least 20 units and is financed by bonds issued under this article [Act].

(b) If a survey conducted by the housing sponsor and verified by the housing finance division [agency] reveals that there is not sufficient need for housing for persons with special needs [elderly individuals of low income or for families of low or moderate income in which an elderly individual is head of the household,] in the area in which the development will be built or renovated to justify building or renovating and reserving at least five percent of the units for persons with special needs [elderly individuals or for families in which an elderly individual is head of the household], the department [agency] may, on a showing of good cause by the housing sponsor, lower the requirements to correspond to the amount of need found by the housing sponsor.

(c) The housing finance division [agency] shall cooperate with the Texas Department on Aging to implement this section and shall reimburse the department for the costs of:

(1) assessing the need for housing for persons with special needs [elderly individuals or for families in which an elderly individual is head of the household] in different localities;

(2) setting standards relating to the design and construction of housing for persons with special needs [elderly individuals];

(3) providing planning assistance to builders; and

(4) publicizing the availability of the housing program to potential developers and residents.

(d) The department [agency] and the Texas Department on Aging shall determine the procedure for paying for the services provided by the Texas Department on Aging. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.14 [†]. PURCHASE AND SALE OF MORTGAGE LOANS. (a) The department [agency] may purchase and take assignments from mortgage lenders or the federal government of notes and mortgages evidencing loans or interest in loans for the construction, remodeling, improvement[;] or rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of low and very low income and families of moderate income.

(b) The department [agency] may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the department [agency]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.15 [†2]. TERMS OF THE PURCHASE AND SALE OF MORTGAGE LOANS. (a) No mortgage loan or interest in a mortgage loan purchased from a mortgage lender is eligible for purchase by or on behalf of the department [agency] unless the mortgage lender certifies that[:

[(†)] the mortgage loans or interest in the mortgage loans transferred to the housing finance division [agency] are for housing developments for persons or families of low and very low income or for families of moderate income[; or

[(2) the proceeds of the sale or the equivalent have been or will be invested in mortgage loans that benefit persons and families of low income and families of moderate income or invested in short-term obligations pending the making of such mortgage loans].

(b) When the department [agency] purchases a mortgage loan or interest in a mortgage loan from a mortgage lender, it shall pay a purchase price equal to the outstanding principal balance, except that discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return consistent with the obligations of the department [agency] and the purposes of this article [Act]. In addition to payment of the outstanding principal balance, the department [agency] shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment.

(c) Mortgage loans or interest in a mortgage loan purchased or sold under this section may include mortgage loans that are insured, guaranteed, or assisted by the federal government, or for which there is commitment by the federal government to insure, guarantee, or assist the mortgage loan.

(d) The department [agency] shall adopt rules governing the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules governing:

(1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans or interest in the mortgage loans;

(2) restrictions as to the number of family units, location, or other qualifications of residences to be financed by residential mortgage loans, and income limits of persons and families of low and very low income or families of moderate income occupying the residence;

(3) restrictions as to the interest rates on mortgage loans or the return realized by mortgage lenders;

(4) requirements for commitments by mortgage lenders with respect to mortgage loans;

(5) schedules of fees and charges necessary for expenses and reserves of the housing finance division [agency];

(6) resale of the housing development; and

(7) any other matters related to the powers of the department [agency] to purchase and sell mortgage loans or interest in the mortgage loans.

(e) The department [agency] shall review each mortgage loan purchased or financed by the department [agency] to determine if the loan meets the conditions of this article [Act], the rules of the department [agency], and any commitment made with the mortgage lender to purchase mortgage loans. The department [agency] may require the substitution of another mortgage loan when it determines that a loan does not comply with this article [Act], its rules, or a commitment made with the mortgage lender. Subsections (b), (c), (d), (e), and (g) of Section 3.12 [†0] of this article [Act] apply to the purchase of mortgage loans.

~~[(f) The agency may not purchase an obligation that is more than two years old.] (from Article 12691-6, Vernon's Texas Civil Statutes)~~

Sec. 3.16. HOUSING TRUST FUND. (a) The housing trust fund is a fund to be administered by the department through the housing finance division and placed with the Texas Treasury Safekeeping Trust Company. The fund consists of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts or grants. Money in the fund may be used only to carry out the purposes of this section.

(b) The fund shall be used to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations, and income-eligible persons, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing. Use of the fund is limited to providing assistance for persons and families of low and very low income and providing technical assistance and capacity building to nonprofit organizations engaged in developing housing for persons and families of low and very low income.

(c) The board shall adopt rules to administer the housing trust fund. At a minimum, the rules must provide:

(1) that the division will give priority to programs that maximize federal resources;

(2) for establishing a process to set priorities for use of the fund, including the distribution of fund resources on the basis of a request for a proposal process developed and approved by the board;

(3) that the criteria used to rank proposals will include the leveraging of federal resources, the cost effectiveness of a proposed project, and the extent that persons and families of very low income are served by the project;

(4) that funds may not be made available to a project that has the effect of permanently and involuntarily displacing persons and families of low income;

(5) that the board will attempt to allocate funds to achieve a broad geographical distribution of funds with special attention paid to equitably serving rural and nonmetropolitan areas and that the allocation process will take into account the number and percentage of income-qualified families in different geographical areas; and

(6) that multi-family housing developed or rehabilitated through the fund will remain affordable to income-qualified households for at least 20 years.

(d) An independent auditor shall annually conduct an audit to determine the amount of unencumbered fund balances that is greater than the amount needed for reserve fund requirements. The independent auditor shall submit the audit report to the board before January 1 of each year.

(e) Based on the audit report, the housing finance division shall transfer, except as provided by Subsections (f), (g), and (h) of this section, to the housing trust fund on or before January 10 of each year an amount equal to one-half of the housing finance division's unencumbered fund balances, determined on the basis of the debt rating criteria established for housing finance agencies by one or more nationally recognized rating agencies, in excess of two percent of the division's total bonded

indebtedness not rated on its own merits in the highest long-term debt rating category by one or more nationally recognized rating agencies.

(f) If, at the time any annual audit required by Subsection (d) of this section is concluded, the housing finance division's unencumbered fund balances exceed four percent of its total bonded indebtedness not rated on its own merits in the highest long-term debt rating category, the amount transferred on or before the next January 10 shall consist of all amounts in excess of that four percent.

(g) If, at the time any annual audit required by Subsection (d) of this section is concluded, a nationally recognized rating agency has recommended the housing finance division to maintain unencumbered fund balances in excess of the amount permitted by Subsection (e) of this section to be maintained as unencumbered fund balances, as a condition to achieving or maintaining a rating of at least Aa/A+ on all or a portion of the bonded indebtedness of the housing finance division that is issued under an open indenture or an open flow of funds, the amount transferred on or before each January 10 shall consist of all funds in excess of the amount required by the rating agency to be held as unencumbered fund balances.

(h) If, at the time any annual audit required by Subsection (d) of this section is concluded, a nationally recognized rating agency has recommended the housing finance division to increase the amount of its unencumbered fund balances to achieve or maintain a financially sound condition or to prevent a decrease in the long-term debt rating maintained on all or a portion of the housing finance division's bonded indebtedness, the housing finance division may not make further annual transfers to the housing trust fund until all requirements and conditions of the rating agency have been met.

(i) The housing trust fund provided for by this section is not subject to the Texas Trust Code (Section 111.001, et seq., Property Code). (new)

Sec. 3.17. PROPERTY OWNERSHIP PROGRAM. (a) The department may acquire and own real property on an interim basis for sale or rental to persons and families of low and very low income and to nonprofit housing organizations and other housing organizations to serve the needs of persons and families of low and very low income.

(b) Property acquired by the department must qualify for home mortgage insurance after rehabilitation.

(c) The housing finance division may use money from the housing trust fund or unencumbered fund balances to purchase property under this section. The division may not use more than 10 percent of the yearly balance of the housing trust fund to acquire real property.

(d) If property has been acquired by the department under this section, the housing finance division shall have an independent audit conducted annually to analyze the financial stability of the property ownership program, the cost effectiveness of the program, and the effectiveness of the program in serving persons of low and very low income. (new)

Sec. 3.18. LOW AND VERY LOW INCOME HOUSING RESOURCE CENTER. (a) The board shall establish a low and very low income housing resource center in the division.

(b) The center shall:

(1) provide educational material to housing advocates, housing sponsors, borrowers, and tenants;

(2) provide technical assistance to nonprofit housing sponsors; and

(3) focus on the marketing of loans and other programs of the housing finance division to persons and families of low and very low income and assist lenders in the marketing of loans to persons and families of low and very low income. (new)

Sec. 3.19. MORTGAGE LENDER SELECTION. The department shall develop a process to select mortgage lenders that includes consideration of:

(1) the lender's distribution of loans by income and geographic region in past programs of the department or its predecessor; and

(2) the lender's Community Reinvestment Act of 1977 rating. (new)

Sec. 3.20. MONITORING HOUSING FINANCE DIVISION MORTGAGE LENDERS, SERVICERS, AND CONTRACTORS. (a) The department shall develop a written plan to monitor and audit the performance of mortgage lenders. The plan must include:

(1) a requirement that mortgage lenders comply with quality control standards established by appropriate federal agencies;

(2) a requirement for a compliance audit of mortgage lenders based on program guidelines by randomly selecting loans and the associated paperwork for review;

(3) monitoring delinquency and foreclosure rates for currently participating mortgage lenders to identify unfavorable trends;

(4) a requirement for an extensive audit after a finding of an unfavorable trend in accordance with Subdivision (a)(3) of this section; and

(5) a requirement for reporting the information gathered under this section to the director and the board.

(b) The housing finance division shall develop a written plan to monitor and audit the performance of servicers. The plan must include:

(1) a method of developing criteria to evaluate the performance of servicers;

(2) a method of monitoring the performance of a servicer based on the criteria;

(3) a review of the financial statements of a servicer;

(4) a process for an extensive audit of servicers that repeatedly violate the terms of the servicers' contracts with the department;

(5) the designation of an audit team consisting of staff members from relevant areas of the housing finance division; and

(6) a method of reporting the information to the director and the board.

(c) The department shall develop a written plan to monitor and audit the performance of real estate owned contractors and other contractors. The plan must include:

(1) a periodic inspection of foreclosed property;

(2) a method of monitoring contractor performance of contract requirements; and

(3) a periodic review of contractor billing procedures. (new)

Sec. 3.21 [†3]. SUPERVISING HOUSING SPONSORS. (a) The housing finance division [agency] shall have the power to supervise housing sponsors of housing developments, financed under this article, that are rented or leased to tenants, including limited profit housing sponsors, and their real and personal property, as provided in this section. [in the following respects:]

(b) [(a)] The department [agency] may prescribe uniform systems of accounts and records for housing sponsors and may require housing sponsors to make reports and certifications of their expenditures and to answer specific questions on forms and at such times as may be necessary for the purposes of this article [Act].

(c) [(b)] The department [agency], through its agents or employees, may enter upon and inspect the land, buildings, and equipment of a housing sponsor, including all parts thereof, and may examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor.

(d) [(c)] The department [agency] may supervise the operation and maintenance of a housing development and may order repairs as necessary to

protect the public interest or the health, welfare, or safety of the housing development occupants.

(e) [(d)] The department [agency] shall approve and may alter from time to time a schedule of rents and charges for a housing development operated by the department under Section 3.17 of this article.

(f) [(e)] The department [agency] shall determine standards for [and shall control] tenant and management selection by a housing sponsor.

(g) [(f)] The department [agency] may require a housing sponsor to pay the housing finance division [agency] fees and charges for the costs of regulating the housing sponsor, including, without limitation, the costs of examination, inspection, supervision, and auditing the housing sponsor.

(h) [(g)] The department [agency] may order a housing sponsor to do or to refrain from doing what is necessary to comply with the provision of law, the rules of the housing finance division [agency], and the terms of a contract or agreement to which the housing sponsor is a party.

(i) [(h)] The department [agency] shall regulate the retirement of any capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to any dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as shall be prescribed by rules of the housing finance division [agency], of the original face amount of the limited profit housing sponsor's investment or equity in any housing development.

(j) [(i)] The housing finance division [agency] shall make rules specifying the categories of cost allowable in the construction, reconstruction, remodeling, improvement, or rehabilitation of a housing development. The housing finance division [agency] shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the department [agency], except that the department [agency] may accept, in lieu of certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, that will enable the housing finance division [agency] to determine with reasonable accuracy the amount of the housing development costs.

(k) [(j)] This section does not apply to any housing development for which persons or families of low and very low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.22 [14]. ADMISSION TO HOUSING DEVELOPMENTS. (a) Admission to housing developments financed under this article that are rented or leased to tenants [~~financed under this Act~~] is limited to persons or families of low and very low income and families of moderate income.

(b) The department [agency] shall periodically examine, or require that a housing sponsor examine, the income of any person or family who are tenants residing in a housing development. The department [agency] or, with the approval of the department [agency], the housing sponsor of a housing development may terminate the tenancy or interest of any person or family whose gross income exceeds the income level prescribed for admission by more than 25 percent for a period of six months or more. No tenancy or interest of any person or family in any housing development may be terminated except on reasonable notice and opportunity to obtain suitable alternate housing in accordance with rules of the department; the housing finance division shall encourage a tenant to participate in other programs of the department for which the tenant qualifies by providing information on those programs to the tenant at the time notice of termination is given under this section [agency]. A person or family whose gross income would not otherwise permit continued occupancy of a dwelling unit may, with the approval of the department [agency], continue to occupy a dwelling unit on payment of a

surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the department [agency].

(c) If a person or family who resides in a cooperative housing development must move from the housing development because of excessive income, the person or family must be discharged from liability of any note, bond, or other evidence of indebtedness and reimbursed, in accordance with the rules of the department [agency], for all sums paid to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for that purpose.

(d) This section does not apply to any housing development for which persons or families of low and very low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.23 [†5]. PROCEDURE PRIOR TO FINANCING OF HOUSING DEVELOPMENTS UNDERTAKEN BY HOUSING SPONSORS. Notwithstanding any other provision of this article [Act], the department [agency] is not empowered to finance any housing development undertaken by a housing sponsor unless, prior to the financing of any housing development hereunder, the department [agency] finds that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices which persons or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor or sponsors undertaking the proposed housing development in this state will supply well-planned and well-designed housing for persons or families of low and very low income or families of moderate income and that such sponsors are financially responsible;

(3) the financing of the housing development pursuant to the provisions of this article [Act] will constitute a public purpose and will provide a public benefit; and

(4) the housing development will be undertaken within the authority conferred by this article [Act] upon the housing finance division [agency] and the housing sponsor or sponsors. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.24 [2†]. ISSUE OF DEPARTMENT [~~HOUSING FINANCE AGENCY~~] BONDS. (a) The board [~~of directors of the agency~~] by resolution from time to time may provide for the issuance of negotiable bonds as authorized by the Texas Constitution. The bonds shall be on a parity and shall be called Texas Housing Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

(b) In addition to the authority to issue general obligation bonds as provided in Subsection (a) of this section [~~Section 21 of this Act~~], the department [agency] may issue its revenue bonds for the purpose of providing money with which to carry out, achieve, or effectuate any purpose, power, or duty of the housing finance division [agency] under this article [Act]. The housing finance division's [agency's] bonds may be issued from time to time in one or more series or issues, payable as to principal, interest, and redemption premium, if any, from and secured by a first lien or a subordinate lien on and pledge of all or any part of the revenues, income, or other resources of the housing finance division [agency] including, without limitation, the repayments of mortgage loans, the earnings from investment or deposit of the reserve fund and other funds of the housing finance division [agency], the fees, charges, and any other amounts or payments received pursuant to this part [Act], and any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations [~~from the federal government~~].

(c) Also, the department [agency] may issue [~~its bonds, which may be designated as "bond anticipation notes," which may be made payable as to~~]

principal, interest, and redemption premium, if any, solely from the proceeds from the sale of the agency's] definitive refunding bonds if or when issued and delivered for the purpose of refunding other bonds of the department or the obligations of its predecessor or of any local housing finance corporation or corporations [such bond anticipation notes] or payable as to principal, interest, and redemption premium, if any, from such [definitive] refunding bonds and any other revenues, income, or resources of the department [agency"], and the department [agency] may covenant that it will issue, sell, and deliver such definitive refunding bonds in such manner as will provide the money necessary to pay any required part of the principal of and interest and redemption premium, if any, on the refunded bonds or obligations [bond anticipation notes] when due; provided that such refunded bonds or obligations [bond anticipation notes] may be refunded in any other manner permitted by the article or other laws of the state [Act].

(d) The payment of the principal of and the interest and redemption premium, if any, on the department's [agency's] bonds additionally may be secured by a first lien or a subordinate lien on and pledge of all or any part of the assets and real, personal, or mixed property of the department [agency] (including mortgages and obligations securing same, and investments), and the [reserve fund, or other] reserves or funds of the housing finance division [agency].

(e) All bonds issued by the department [agency] shall be authorized by resolution of the board and may be secured by mortgages or deeds of trust on property, and/or by trust agreements or trust indentures administered by one or more corporate trustees, in such manner as may be prescribed by the board; and the substantial form of any such mortgage, deed of trust, trust agreement, or trust indenture shall be authorized under [set forth in and constitute a part of] the resolution authorizing the issuance of the bonds. Any resolution authorizing the issuance of the bonds of the department [agency] may provide that part of the proceeds from the sale thereof may be used for paying the costs and expenses of issuing the bonds, for paying interest on the bonds during such period as may be prescribed by the board, and for paying or repaying operation and maintenance expenses of the department [agency] to the extent and for the period of time specified in said resolution, and also for the funding, increasing, or restoring any depletions of the reserve fund or other reserves or funds for any purposes.

(f) The department [agency] may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions as may be set forth in the resolution authorizing the issuance of the bonds.

(g) The department [agency] also may issue its bonds for the specific purpose of providing all or any part of the money required for funding or increasing the [reserve fund or other] reserves or funds of the department [agency].

(h) Bonds issued by the department also may be refunded in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended, and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Articles 717k and 717k-3, Vernon's Texas Civil Statutes). (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.25 [22]. INTEREST ON BONDS. The department's [agency's] bonds may be issued to bear interest at any rate or rates as shall be determined by the board. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.26 [23]. FORM; DENOMINATION; PLACE OF PAYMENT. (a) The department's [agency's] bonds may be issued as serial bonds, or as term bonds, or any combination of each as shall be determined by the board.

(b) The department's [agency's] bonds may be issued in coupon form payable to bearer, or in fully registered form, or as coupon bonds payable to bearer but registrable as to principal alone, or as to both principal and interest, or in any other form, which may include registered uncertificated obligations not represented by

written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the department [agency] under a system of books and records maintained by a bank serving as trustee, paying agent, or bond registrar.

(c) The department's [agency's] bonds may be payable at any place or places within or without the United States, may be made payable in any currency or medium of exchange including United States dollars and currencies of nations other than the United States of America, may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be executed, all as provided by the board in the resolution authorizing the issuance of said bonds.

(d) The department's [agency's] bonds may be sold in such manner, at such price, and under such terms and conditions, as shall be determined by the board under any contractual arrangement approved by the board. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.27 [24]. MATURITY OF BONDS. The department's [agency's] bonds may mature within any period as shall be determined by the board. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.28 [25]. REDEMPTION BEFORE MATURITY; CONVERSION.
(a) The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form.

(b) If the duty of replacement, conversion, or reconversion of bonds is imposed upon a place of payment (paying agent) of any bonds, or upon a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond need not be reapproved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 3.30 [27] of this part [Act]. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 3.30 [27] of this article [Act], in accordance with the procedures established in the resolution authorizing the bonds. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.29 [26]. DEPARTMENT'S [AGENCY'S] BONDS NOT OBLIGATIONS OF THE STATE. (a) The department's [agency's] bonds are solely obligations of the department [agency] and are payable solely from funds of the housing finance division [agency], and this article [Act] and the department's [agency's] bonds are not and do not create or constitute in any way an obligation, a debt, or a liability of the state, or create or constitute a pledge, giving, or lending of the faith or credit or taxing power of the state except bonds authorized by the Texas Constitution and as provided in Subsection (a) of Section 3.24 [21] of this article [Act].

(b) Each bond of the department [agency] not authorized by Subsection (a) of Section 3.24 [21] of this article [Act] shall contain on its face a statement to the effect that the state is not obligated to pay the principal thereof or interest thereon; and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such payment.

(c) However, the state hereby pledges to and agrees with the holders of any bonds issued under this article [Act] that the state will not limit or alter the rights hereby vested in the department [agency] to fulfill the terms of any agreements made with the said holder thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The department [agency] is authorized to include this pledge and agreement of the

state in any agreement with the holders of such bonds. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.30 [27]. APPROVAL OF BONDS; REGISTRATION. All bonds issued by the department [agency] and the appropriate proceedings authorizing their issuance shall be submitted to the Attorney General of the State of Texas for examination. If the attorney general finds that such bonds have been authorized in accordance with this article [Act], the attorney general shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.31 [28]. EXECUTION OF BONDS. The bonds authorized by Subsection (a) of Section 3.24 [24] of this article [Act] shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the secretary of state shall attest the bonds and impress on them the state seal. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.32 [29]. FACSIMILE SIGNATURES AND SEALS. The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the chairman of the board or any other officer in executing or attesting the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board [of the agency]. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.33 [30]. SIGNATURE OF FORMER OFFICER. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if the officer had remained in office until the delivery had been made. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.34 [31]. BONDS INCONTESTABLE. (a) After approval by the attorney general and registration by the comptroller of public accounts, the bonds shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

(b) In addition, general obligation bonds issued as provided in Subsection (a) of Section 3.24 [24] of this article [Act] and after approval and registration as provided in this article [Act] shall constitute general obligations of the state. (from Article 12691-6, Vernon's Texas Civil Statutes)

[Sec. 32. RESERVE FUND. (a) There may be created and established by the agency, with the State Treasurer of the State of Texas, a separate and special fund to be entitled the Texas Housing Agency Reserve Fund. The reserve fund may be used for the purpose of paying principal of and interest, and redemption premium, if any, on any of the agency's bonds secured by the reserve fund, or any account therein, in order to prevent or cure a default, if, when, and to the extent the revenues, income, and receipts of the agency are insufficient for such payment, and for such other purposes as are provided in any resolution authorizing the issuance of the agency's bonds. The agency may establish separate accounts within the reserve fund to secure and be applicable only to the agency's bonds for which they are established.

(b) It shall be an additional duty of the State Treasurer, in the State Treasurer's official capacity, ex officio, to accept the reserve fund, as custodian thereof, in accordance with the provisions of this section; but the reserve fund shall not be commingled with the General Revenue Fund of the state or any other special funds or accounts in the State Treasury, and the reserve fund shall not constitute or be a part of the State Treasury. The reserve fund and any account therein shall be kept

and maintained separate and apart from all other money, funds, deposits, and accounts and shall be kept and held in escrow and in trust by the State Treasurer, for and on behalf of, and charged with an irrevocable lien and pledge in favor of, the holders of the agency's bonds secured thereby, and the reserve fund shall be used only as provided in this Act. Legal title to the reserve fund shall be in the agency unless or until paid out as herein provided, but the State Treasurer, as custodian, shall administer the reserve fund strictly and solely as provided in this Act and the agency's bond resolutions, and the State Treasurer shall take no action with respect to the reserve fund other than that specified in this Act and in said bond resolutions.

[(c) Out of proceeds from the sale and delivery of its first series or issue of bonds which are secured by the reserve fund, or from any other source available to it, the agency may provide for depositing into the reserve fund, or an account therein, such amount as is specified in the bond resolution, and thereafter the reserve fund, or such accounts therein, shall be increased to, when necessary, and maintained at, said amount with respect to all bonds at any time outstanding which are secured by the reserve fund, or such account therein. The board is authorized to establish the procedures for funding, increasing, and maintaining the reserve fund, or any account therein, and the operation and use of, and the priorities of bondholders in connection with, the reserve fund, or any account therein, in the resolutions authorizing the issuance of its bonds. The State Treasurer shall be furnished certified copies of said bond resolutions, and the State Treasurer shall comply therewith.

[(d) Amounts in the reserve fund, or any account therein, at any time in excess of the amount then required to be on hand therein, whether by reason of investment or deposit earnings or otherwise, shall be paid by the State Treasurer directly to, or upon the order of, the agency, upon written request by the agency, or disposed of and disbursed by the State Treasurer as provided in any bond resolution of the agency.

[(e) The State Treasurer shall place the money in the reserve fund, or any account therein, in demand or time deposits, or invest said money in any direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the federal government, and such deposits and/or investments shall be made by the State Treasurer at the places and in the amounts and manner as provided in written instructions from the agency as to the procedures and details thereof, or as provided in any bond resolution of the agency. If said money is placed in demand or time deposits, such deposits shall be secured at all times by the same type of obligations as those in which the reserve fund may be invested. Earnings from such deposits and investments shall be credited to the reserve fund, or the account therein from which the money was deposited or invested, or disposed of as provided in any bond resolution. Said investments shall be sold promptly by the State Treasurer if and when necessary to prevent or cure any default in connection with the agency's bonds, as provided in this Act and the resolutions authorizing such bonds.

[(f) The State Treasurer's surety bond required by law, and conditioned that the State Treasurer will faithfully execute the duties of the treasurer's office, shall be applicable to and cover the execution of the State Treasurer's duties with respect to the reserve fund as required by this Act.

[(g) Notwithstanding the foregoing provisions of this section, the agency may or may not, at its option, create or fund the reserve fund and may issue its bonds which are not secured by the reserve fund, or any account therein, but which may be secured by any other or separate reserve fund or account to be kept at any place, or secured in any other manner provided in the agency's bond resolutions.] (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.35 [33]. PAYMENT ENFORCEABLE BY MANDAMUS. The writ of mandamus and all other legal and equitable remedies shall be available to any

party at interest to require the department [agency], the State Treasurer, and any other party to carry out its or their agreements and to perform its or their functions and duties under this article [Act], the Texas Constitution, or the department's [agency's] bond resolutions. (from Article 1269I-6, Vernon's Texas Civil Statutes)

[Sec. 34.—REFUNDING BONDS. (a) Any bonds issued by the agency may be refunded, or otherwise refinanced, by the issuance by the agency of refunding bonds for such purpose, under such terms, conditions, and details as shall be determined by the board.

(b) All pertinent and appropriate provisions of this Act shall be applicable to such refunding bonds, and they may be issued in the manner provided herein for other bonds authorized under this Act, provided that such refunding bonds may be sold and delivered in amounts sufficient to provide for the payment of the principal, interest, and redemption premium, if any, of any bonds to be refunded, at maturity or on any redemption date, in accordance with such procedures as shall be determined by the board, and the comptroller of public accounts shall register such refunding bonds without the necessity of cancelling the bonds being refunded.

(c) Also, such refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In any case where refunding bonds are to be exchanged, the comptroller of public accounts shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the resolution authorizing the refunding bonds; and any such exchange may be made in one delivery or in several installment deliveries.

(d) Bonds issued by the agency also may be refunded in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended, and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Articles 717k and 717k-3, Vernon's Texas Civil Statutes);] (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.36 [35]. BONDS NEGOTIABLE INSTRUMENTS. Notwithstanding any statute to the contrary, each bond and interest coupon issued and delivered by the housing finance division [agency] is and constitutes a negotiable instrument within the meaning and for all purposes of the Texas Uniform Commercial Code, except that said bonds may be registered or subject to registration as permitted by this article [Act]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.37 [36]. PAYMENT OF DEPARTMENT BONDS [AGENCY'S OBLIGATIONS]. It is the duty of the board to establish and collect sufficient fees and charges for services and facilities and to utilize all other available sources of revenues, income, and receipts, in order to pay all expenses of operation and maintenance of the department [agency], to pay the principal of and interest on its bonds, and to create and maintain the [reserve fund and any other] reserves or funds as provided in each resolution authorizing the issuance of its bonds. In any resolution authorizing the issuance of the department's [agency's] bonds the board may prescribe systems, methods, routines, and procedures under which the department [agency] shall function, consistent with this article [Act]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 3.38 [37]. VALIDITY OF LIENS AND PLEDGES. Each lien on or pledge of revenues, income, or other resources of the housing finance division [agency], or on the assets of the housing finance division [agency], or on the [reserve fund, or other] reserves or funds of the housing finance division [agency], as authorized by this article [Act], shall be valid and binding from the time of payment for and delivery of the bonds authorized by the resolution of the board creating or confirming any such lien or pledge. All such liens and pledges shall be fully effective as to items then on hand or thereafter received, and said items shall be subject to such liens or pledges without any physical delivery thereof or further act. All such

liens and pledges shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the department [agency] or other party, irrespective of whether such parties have notice thereof. Neither any resolution authorizing the issuance of bonds of the department [agency] nor any other instrument by which any such lien or pledge is created or confirmed need be filed or recorded except in the records of the department [agency], and except that each bond resolution of the department [agency] shall be submitted to the Attorney General of the State of Texas as required by Section 3.30 [27] of this article [Act]. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.39 [38]. BONDS NOT TAXABLE. As set forth in this article [act] the department [agency] will be performing an essential governmental function in the exercise of the powers conferred upon it by this article [Act], and the bonds of the department [agency] issued pursuant to this article [Act], and the interest and income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of such bonds shall at all times be free from taxation and assessments of every kind by this state and by all public agencies. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.40 [39]. AUTHORIZED INVESTMENTS. (a) All bonds issued by the department [agency] under this article [Act] shall be legal and authorized investments for all:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan associations;
- (5) savings and loan associations;
- (6) insurance companies of all kinds and types;
- (7) fiduciaries;
- (8) trustees;
- (9) guardians; and
- (10) sinking and other public funds of the state, cities, towns, villages,

counties, school districts, and other political subdivisions and public agencies of the state. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.41 [40]. SECURITY FOR DEPOSIT OF FUNDS. All bonds also shall be eligible and lawful security for all deposits of public funds of the state and all public agencies, to the extent of the par or market value of said bonds, whichever is greater, when accompanied by any unmatured interest coupons appurtenant thereto. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.42 [41]. MUTILATED, LOST, STOLEN, DESTROYED BONDS. The board may provide procedures for the replacement of any mutilated, lost, stolen, or destroyed bond or interest coupon. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.43 [42]. NO GAIN ALLOWED. Neither the director [administrator, chairman of the board;] nor any member [director] of the board [agency], for purposes of personal pecuniary gain, shall have or attempt to have any pecuniary interest in any transaction to which the department [agency] is a party. A member of the board or employee of the department may not purchase bonds of the department in the open secondary market for municipal securities. (from Article 12691-6, Vernon's Texas Civil Statutes)

Sec. 3.44. RENTAL REHABILITATION GRANT PROGRAM. The department shall administer the state's allocation of federal funds provided under the rental rehabilitation grant program authorized by Section 17 of the United States Housing Act of 1937. (42 U.S.C. Section 1437o). (new)

Part 4. Miscellaneous Provisions

Sec. 4.01 [43]. **NO DISCRIMINATION.** No person in the state shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this article [Act]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 4.02 [44]. **LIBERAL CONSTRUCTION [OF THE ACT].** This article [Act] shall be construed liberally to effectuate the legislative intent and the purposes of this article [Act], and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers. (from Article 1269I-6, Vernon's Texas Civil Statutes)

Sec. 4.03 [45]. **CUMULATIVE EFFECT [OF THE ACT]; CONFLICTING LAWS.** This article [Act] shall be cumulative of all other laws, but this article [Act] shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions, approvals, or limitations contained therein, except as herein specifically provided; and to the extent of any conflict or inconsistency between any provisions of this article [Act] and any provisions of any other law, the provisions of this article [Act] shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this article [Act]. (from Article 1269I-6, Vernon's Texas Civil Statutes)

[Sec. 46. **SEVERABILITY CLAUSE.** In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.] (from Article 1269I-6, Vernon's Texas Civil Statutes)

[Sec. 47. **APPROPRIATION.** If the General Appropriation Act for the fiscal biennium ending on August 31, 1981, contains an appropriation for the administration of this Act, the validity of the appropriation is not affected by the fact that it refers to the Texas Housing Agency as the Texas Housing Finance Authority.] (from Article 1269I-6, Vernon's Texas Civil Statutes)

[Sec. 48. **AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS CONTINGENT.** Subsection (a) of Section 21 of this Act, to the extent it authorizes the issuance of general obligation bonds, takes effect if and when the Texas Constitution is amended to permit the issuance of such bonds as contemplated by that provision of this Act.] (from Article 1269I-6, Vernon's Texas Civil Statutes)

SECTION 3. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Appointed officer of a major state agency" means

any of the following:

Commission of Texas;

Commerce;

Aviation;

(i) a member of the Public Utility

(ii) a member of the Texas Department of

(iii) a member of the Texas Board of

Board;	(iv) a member of the Texas Air Control
Beverage Commission;	(v) a member of the Texas Alcoholic
Commission of Texas;	(vi) a member of the Finance
and General Services Commission;	(vii) a member of the State Purchasing
Criminal Justice;	(viii) a member of the Texas Board of
the Employees Retirement System of Texas;	(ix) a member of the Board of Trustees of
Public Transportation Commission;	(x) a member of the State Highway and
Compensation Commission;	(xi) a member of the Texas Workers'
Insurance;	(xii) a member of the State Board of
Commission;	(xiii) a member of the Parks and Wildlife
Commission;	(xiv) a member of the Public Safety
Board;	(xv) the Secretary of State;
Machine Commission;	(xvi) a member of the State Securities
Development Board;	(xvii) a member of the Texas Amusement
Commission;	(xviii) a member of the Texas Water
	(xix) a member of the Texas Water
	(xx) a member of the governing board of
	a state senior college or university as defined by Section 61.003, Education Code;
Education Coordinating Board;	(xxi) a member of the Texas Higher
Employment Commission;	(xxii) a member of the Texas
Board;	(xxiii) a member of the State Banking
of the Teachers Retirement System of Texas;	(xxiv) a member of the board of trustees
Commission; [or]	(xxv) a member of the Credit Union
Board; <u>or</u>	(xxvi) a member of the School Land
	<u>(xxvii) a member of the board of the</u>
	<u>Texas Department of Housing and Community Affairs.</u>

SECTION 4. Section 2, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended by amending Subsections (c) and (e) and adding Subsection (f) to read as follows:

(c) Of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds, one-third of said portion shall be made available exclusively to the housing finance division of the Texas

Department of Housing and Community Affairs [Agency] for the purpose of issuing qualified mortgage bonds until August 25.

(e) Except as provided in Subsection (f) of this section, if [if] qualified mortgage bonds or qualified small issue bonds no longer qualify for treatment as tax-exempt obligations under the provisions of the code, then the provisions of Subsections (b)(1) and (3) ~~[(c) or (b)(3)]~~ of this section shall be null and void.

(f) Subsection (e) of this section does not apply to qualified mortgage bonds made available exclusively to the housing finance division of the Texas Department of Housing and Community Affairs under Subsection (c) of this section.

SECTION 5. Section 3(a), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) For any one project, no issuer;

(1) prior to September 1, shall receive reservations in excess of \$50,000,000, except for the housing finance division of the Texas Department of Housing and Community Affairs; [Agency]; and

(2) prior to November 1, shall receive reservations in excess of \$100,000,000.

SECTION 6. Section 11.207(b), Education Code, is amended to read as follows:

(b) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each respective agency:

(1) the Central Education Agency;

(2) the Texas Higher Education Coordinating Board[, ~~Texas College and University System~~];

(3) the Texas Department of Housing and Community Affairs—community affairs division;

(4) the Texas Youth Commission;

(5) the Texas Juvenile Probation Commission;

(6) the Texas Department of Human Services;

(7) the Texas Department of Criminal Justice [~~Corrections~~];

(8) the Texas Employment Commission;

(9) the Texas Commission on Alcohol and Drug Abuse;

(10) the Texas Department of Mental Health and Mental Retardation; and

(11) the Texas Department of Health.

SECTION 7. Sections 21.928(c) and (d), Education Code, as added by Chapter 1192, Acts of the 71st Legislature, Regular Session, 1989, are amended to read as follows:

(c) The district shall effectively publicize the hearings and hold all the hearings before the start of the school year. The Texas Department of Housing and Community Affairs, not later than May 1 of each year, shall distribute to each school district described in Subsection (b) of this section information that describes model school-age child care programs and explains how a school district may obtain funds through the federal Dependent Care Development Grant program or other grant programs that are administered by the department of housing and community affairs. A school district shall distribute the information received from the department of housing and community affairs to the public at a hearing.

(d) The school child care services fund is established in the state treasury. The fund consists of money appropriated to the fund, of transfers made under Subsection (e) of this section, and of gifts, grants, or donations to the fund. The department of housing and community affairs may apply for and accept gifts, grants, and donations for that purpose. The fund shall be used to pay the costs of

implementing school-age child care before and after the school day and during school holidays and vacations for a school district's school-age students. Eligible use of funds shall include planning, development, establishment, expansion, or improvement of child care services and reasonable start-up costs. The department of housing and community affairs shall administer the fund with the advice of the Central Education Agency. The department of housing and community affairs by rule shall establish procedures and eligibility requirements for distributing money from the fund. Subject to the eligibility requirements established by rule, the department of housing and community affairs may distribute money from the fund to any school district. The department of housing and community affairs may distribute money appropriated from the fund to pay all or part of the fees charged for providing services to students who have been identified as potential dropouts. The department of housing and community affairs shall assist school districts in the development and evaluation of child care services.

SECTION 8. Section 464.001(2), Government Code, is amended to read as follows:

(2) "Department" means the Texas Department of Housing and Community Affairs.

SECTION 9. Section 36.015(b), Health and Safety Code, is amended to read as follows:

(b) The committee is composed of nine members. The chief administrative officer of each of the following agencies shall appoint one member to the committee:

- (1) Central Education Agency;
- (2) Texas Commission for the Blind;
- (3) Texas Commission for the Deaf;
- (4) Texas Department of Housing and Community Affairs;
- (5) Texas Department of Health;
- (6) Texas Department of Human Services;
- (7) Texas Department of Mental Health and Mental Retardation;
- (8) Texas School for the Blind and Visually Impaired; and
- (9) Texas School for the Deaf.

SECTION 10. Section 52.002(c), Human Resources Code, is amended to read as follows:

(c) The council consists of one representative of the attorney general's child support enforcement division, appointed by the attorney general, seven private sector representatives recommended by appropriate private sector agencies, and one representative from each of the following agencies, appointed by the executive director or commissioner of each agency:

- (1) the Central Education Agency;
- (2) the Texas Department of Human Services;
- (3) the Texas Department of Health;
- (4) the Texas Department of Housing and Community Affairs;
- (5) the Texas Employment Commission;
- (6) the Texas Health and Human Services Coordinating Council;
- (7) the Texas Department of Mental Health and Mental Retardation;

and

- (8) the Texas Department of Commerce.

SECTION 11. Section 101.022(g), Human Resources Code, is amended to read as follows:

(g) The department shall cooperate with the Texas Department of Housing and Community Affairs [Agency] to provide affordable housing for elderly individuals and for families in which an elderly individual is head of the household [in accordance with the Texas Housing Agency Act (Article 12691-6, Vernon's Texas Civil Statutes)] and shall:

- (1) assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities;
- (2) set standards relating to the design and construction of housing for elderly individuals;
- (3) provide planning assistance to builders; and
- (4) publicize the availability of the housing program to potential developers and residents.

SECTION 12. Section 131.001(h), Human Resources Code, is amended to read as follows:

(h) The Interagency Council for Services for the Homeless is established as a subcommittee to the council and consists of:

- (1) one representative from each of the following agencies, appointed by the executive director or commissioner of each respective agency:

(A) the Texas Department of Health;

(B) the Texas Department of Human Services;

(C) the Texas Department of Housing and Community Affairs—housing finance division [Agency];

(D) the Texas Department of Mental Health and Mental Retardation;

(E) the Texas Department of Housing and Community Affairs—community affairs division;

(F) the Texas Department on Aging;

(G) the Texas Rehabilitation Commission;

(H) the Central Education Agency; and

(I) the Texas Commission on Alcohol and Drug Abuse;

- (2) one representative of the Texas Health and Human Services Coordinating Council, appointed by the governor; and

- (3) three members representing service providers to the homeless, one each appointed by the governor, the lieutenant governor, and the speaker of the house. A member serves at the pleasure of the appointing official or until termination of the member's employment with the entity the member represents. The members of the council shall annually elect one member to serve as chairperson. The council shall meet at least quarterly. Any actions taken by the council must be approved by a majority vote of the members present.

SECTION 13. Section 8(h), Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), is amended to read as follows:

- (h) In addition to the powers granted by this Act, the state treasurer may exercise the rights and powers granted to the housing finance division of the Texas Department of Housing and Community Affairs [Agency] as provided for by Article 4413(501), Revised Statutes, [~~Subsection (e) of Section 32 of the Texas Housing Agency Act (Article 12691-6, Vernon's Texas Civil Statutes)~~] in connection with the issuance and administration of bonds. Further, in connection with the issuance and administration of bonds, the state treasurer may exercise the rights and powers granted to an issuer under Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes); the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes); and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

SECTION 14. Section 1(c), Chapter 270, Acts of the 40th Legislature, Regular Session, 1927 (Article 911a, Vernon's Texas Civil Statutes), is amended to read as follows:

- (c) The term "Motor Bus Company" when used in this Act means every corporation or persons as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled passenger vehicle not usually operated on or over rails, and engaged

in the business of transporting persons for compensation or hire over the public highways within the State of Texas, whether operating over fixed routes or fixed schedules, or otherwise. However, the term "Motor Bus Company" as used in this Act shall not include:

(1) corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated town or city, and the suburbs thereof, whether separately incorporated or otherwise;

(2) corporations or persons to the extent that they own, control, operate, or manage vehicles in compliance with the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) and only when those vehicles are used to provide transportation subsidized in whole or part by and provided under contract to clients of the Texas Department on Aging, Texas Commission on Alcohol and Drug Abuse, Texas Commission for the Blind, Texas Cancer Council, Texas Department of Housing and Community Affairs, Texas Commission for the Deaf, Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, community action agencies created as provided by federal law, and the Texas Youth Commission, and each agency shall stipulate in the contract with a transportation provider the amount of liability insurance coverage necessary for vehicles covered under this subsection;

(3) corporations or persons to the extent that they own, control, operate, or manage vehicles used for van-pooling or any other nonprofit ride-sharing arrangement by which a group of people share the expense of operating or owning and operating a vehicle in which they commute to and from work with one member of the group serving as driver in exchange for transportation to and from work and reasonable personal use of the vehicle; or

(4) corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled taxicabs designed for carrying no more than five passengers.

SECTION 15. Section 4(2), Texas Housing Rehabilitation Act (Article 1269I-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Department" means the Texas Department of Housing and Community Affairs.

SECTION 16. Section 9(a), Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas Department of Housing and Community Affairs is the supervising agency for the direct grant program known as the energy crisis program. With direct grant money under this Act, the department, under the program, shall provide money for payment to vendors of utilities, goods, or services related to the procurement of energy for heating or cooling residences. Vouchers, in amounts not to exceed \$150 for one household, may be issued directly to consumers in cases of undue hardship.

SECTION 17. Section 11(a), Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas Department of Housing and Community Affairs is the supervising agency for the direct grant program known as the weatherization assistance programs, established in accordance with Part A of the Energy Conservation in Existing Buildings Act of 1976 (42 U.S.C. Section 6861 et seq.). With direct grant money under this Act, the department, under the program, shall make payments for the installation of weatherization materials under the

low-income weatherization assistance program and enhanced weatherization of dwellings occupied by low-income persons.

SECTION 18. Section 4(b), Article 6252-3e, Revised Statutes, is amended to read as follows:

(b) The committee is composed of:

(1) the executive director of:

(A) the State Purchasing and General Services Commission; and

(B) the Texas Department of Housing and Community Affairs; and

(2) the following members appointed by the board:

(A) a representative of the United Way of Texas child care working group;

(B) a representative of the Texas Association for the Education of Young Children;

(C) a representative of the corporate child development fund;

(D) a representative of child care providers; and

(E) six state employees subject to the state classification plan, each of whom has at least one child in a child care facility and each of whom resides in a different geographic area of the state.

SECTION 19. Section 2, Chapter 467, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-13e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. APPLICATION. This Act applies to the Texas Department of Human Services [~~Resources~~], the Texas Department of Health, the Texas Department of Housing and Community Affairs, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation, and any other commission, board, or department designated to receive block grant funds.

SECTION 20. Section 9, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 9. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. An entity that provides transportation subsidized in whole or in part by and provided to clients of the Texas Department on Aging, Texas Commission on Alcohol and Drug Abuse, Texas Commission for the Blind, Texas Cancer Council, Texas Department of Housing and Community Affairs, Texas Commission for the Deaf, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, or Texas Youth Commission is an eligible participant under Section 4 of this article, Chapter 1084, Acts of the 70th Legislature, Regular Session, 1987 (Article 715c, Vernon's Texas Civil Statutes), and The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

SECTION 21. Any balance remaining in the Texas Housing Agency reserve fund shall be transferred to the Texas Department of Housing and Community Affairs—housing finance division reserve fund.

SECTION 22. (a) The Texas Housing Agency and the Texas Department of Community Affairs are abolished. All powers, duties, rights, obligations, personnel, records, assets and other property, and unspent appropriations of the abolished agencies are transferred to the Texas Department of Housing and Community Affairs. Rules of the abolished agencies continue in effect as rules of the Texas Department of Housing and Community Affairs until amended or repealed by the department.

(b) A reference in a law to the Texas Housing Agency or the Texas Department of Community Affairs means the Texas Department of Housing and Community Affairs.

(c) A loan or guarantee made by the Texas Housing Agency becomes a loan or guarantee of the housing finance division of the Texas Department of Housing and Community Affairs.

(d) A general obligation or revenue bond issued by the Texas Housing Agency becomes a general obligation or revenue bond of the housing finance division of the Texas Department of Housing and Community Affairs.

SECTION 23. (a) The executive director of the Texas Department of Community Affairs shall act as the executive director of the Texas Department of Housing and Community Affairs until an executive director is appointed and assumes office under Section 1.09, Article 4413(501), Revised Statutes, as created by this Act. The former law under which the executive director of the Texas Department of Community Affairs was appointed is continued in effect for this purpose. When an executive director is appointed and assumes office under Section 1.09 of Article 4413(501), the office of executive director of the Texas Department of Community Affairs is abolished.

(b) The board of directors of the Texas Housing Agency shall act as the governing board of the Texas Department of Housing and Community Affairs until a majority of the board is appointed and assumes office under Section 1.05, Article 4413(501), Revised Statutes, as created by this Act. The former law under which the board of directors was appointed is continued in effect for this purpose. When a majority of a board is appointed and assumes office under Section 1.05 of Article 4413(501), the board of directors of the Texas Housing Agency is abolished.

SECTION 24. In making the initial appointments to the governing board of the Texas Department of Housing and Community Affairs, the governor shall designate three members of the board to occupy Places 1, 4, and 7 whose terms expire January 31, 1993, three members of the board to occupy Places 2, 5, and 8 whose terms expire January 31, 1995, and three members of the board to occupy Places 3, 6, and 9 whose terms expire January 31, 1997.

SECTION 25. The change in law made by Section 3.06, Article 4413(501), Revised Statutes, as created by this Act, relating to the deposit of revenue and funds of the Texas Department of Housing and Community Affairs—housing finance division in the Texas Treasury Safekeeping Trust Company, applies only to funds and revenues received by the division on or after the effective date of this Act and does not apply to funds required to be placed in private depositories in accordance with the covenant of a bond issue or the trust indentures governing bonds existing immediately before the effective date of this Act.

SECTION 26. (a) On the effective date of this Act, the powers, duties, and obligations of the Texas Department of Commerce relating to the rental rehabilitation grant program are transferred to the Texas Department of Housing and Community Affairs, and the Texas Department of Commerce shall transfer all property of the department and records relating to the rental rehabilitation grant program or purchased with funds of the rental rehabilitation grant program and all records relating to the rental rehabilitation grant program in its custody to the Texas Department of Housing and Community Affairs.

(b) On the transfer of all property and records under Subsection (a) of this section:

(1) a rule, form, or policy adopted by the Texas Department of Commerce relating to the rental rehabilitation grant program becomes a rule, form, or policy of the Texas Department of Housing and Community Affairs; and

(2) a contract made by the Texas Department of Commerce relating to the rental rehabilitation grant program becomes a contract made by the Texas Department of Housing and Community Affairs.

(c) On the effective date of this Act all funds appropriated to the Texas Department of Commerce for the rental rehabilitation grant program are transferred to the Texas Department of Housing and Community Affairs.

(d) On the effective date of this Act all personnel employed by the Texas Department of Commerce for the administration of the rental rehabilitation grant program are transferred to the Texas Department of Housing and Community Affairs.

SECTION 27. This Act takes effect September 1, 1991.

SECTION 28. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Linebarger

Amend C.S.S.B. 546 by adding a new section and renumbering all subsequent sections of the bill to read as follows:

SECTION 12. Effective January 1, 1992, Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.111 to read as follows:

Sec. 11.111. PUBLIC PROPERTY USED TO PROVIDE TRANSITIONAL HOUSING FOR INDIGENT PERSONS. (a) The governing body of a taxing unit by ordinance or order may exempt from ad valorem taxation residential property owned by the United States or an agency of the United States and used to provide transitional housing for the indigent under a program operated or directed by the United States Department of Housing and Urban Development.

(b) For purposes of this section, transitional housing for indigent individuals is housing provided at no cost or nominal cost to an indigent individual or family during a temporary period in which the individual or a member of the family participates in a job training program, job placement program, or other program intended to assist the individual or family to become self-sufficient.

(c) The exemption provided by this section applies even if the United States or its agency leases the property to a nonprofit organization in return for the organization's assistance in operating the program to provide transitional housing, as long as the lease does not require the nonprofit organization to pay more than a nominal amount to lease the property.

The amendments were read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendments to S.B. 546 by a viva voce vote.

SENATE BILL 16 WITH HOUSE AMENDMENT

Senator Bivins called S.B. 16 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Russell

Amend S.B. 16 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the suspension of the driver's license of a person convicted of certain felony offenses; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Section 24B to read as follows:

Sec. 24B. AUTOMATIC SUSPENSION OF LICENSE ON CONVICTION OF CERTAIN FELONY DRUG OFFENSES. (a) In this section:

(1) "Controlled Substances Act" means the federal Controlled Substances Act, 21 U.S.C. Sec. 321 et seq.

(2) "Drug offense" has the meaning assigned by 23 U.S.C. Sec. 104, as amended by Section 333, Pub.L. No. 101-516.

(b) The driver's license, if any, of a person shall be automatically suspended on final conviction of:

(1) a felony under the Controlled Substances Act;

(2) a felony drug offense; or

(3) a felony under Chapter 481, Health and Safety Code.

(c) The department may not reinstate a driver's license suspended under Subsection (b) of this section unless the person whose license was suspended applies to the department for reinstatement of the person's license.

(d) The department is prohibited from issuing a driver's license to a person convicted of a felony under the Controlled Substances Act, of a felony drug offense, or of a felony under Chapter 481, Health and Safety Code, who on the date of conviction did not have a valid driver's license.

(e) The department is prohibited from reinstating the driver's license of a person convicted of a felony under the Controlled Substances Act, of a felony drug offense, or of a felony under Chapter 481, Health and Safety Code, if the driver's license was under suspension on the date of conviction.

(f) Except as provided by Subsection (g) of this section, the period of suspension under this section is for the 180 days immediately following the date of a final conviction, and the period of prohibition under this section is for the 180 days immediately following the date a person applies to the department for reinstatement or issuance of a driver's license.

(g)(1) The period of suspension or prohibition under Subsection (f) of this section will continue for an indefinite period if the person does not attend and successfully complete an educational program, approved by the Texas Commission on Alcohol and Drug Abuse under rules adopted by the commission and the department, designed to educate persons on the dangers of drug abuse.

(2) The Texas Commission on Alcohol and Drug Abuse and the department shall jointly adopt rules for the qualification and approval of providers of educational programs under Subdivision (1) of this subsection.

(3) The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules.

(4) The Texas Commission on Alcohol and Drug Abuse shall monitor, coordinate, and provide training to persons providing educational programs under Subdivision (1) of this subsection and shall administer the approval of educational programs.

(5) If the department receives notification from the clerk of the court in which the person was convicted that the person has successfully completed an educational program under this subsection, and the person's driver's license has been suspended, or the department has been prohibited from issuing a license to the person, for at least the period provided by Subsection (f) of this section, the department, on payment of the applicable fee, shall reinstate the person's license or, on the person's otherwise qualifying for a license, issue a license.

(h) A person whose license is suspended under Subsection (b) of this section is not ineligible to receive an occupational license under Section 23A of this Act because of the suspension. In addition, suspension under Subsection (b) of this section is not a suspension for physical or mental disability or impairment for purposes of eligibility to apply for an occupational license under Section 23A of this Act.

SECTION 2. (a) The comptroller of public accounts shall during the fiscal year ending August 31, 1992, transfer the sum of \$400,000 from the operator's and

chauffeur's license fund to the general revenue fund, and shall during the fiscal year ending August 31, 1993, transfer the sum of \$200,000 from the operator's and chauffeur's license fund to the general revenue fund. The comptroller may make the transfers in one or more installments as the comptroller determines advisable to retain money in the fund for current appropriations.

(b) In addition to other amounts appropriated for the fiscal year ending August 31, 1992, the sum of \$400,000 is appropriated for that period from the general revenue fund to the Texas Commission on Alcohol and Drug Abuse for the development of drug abuse educational programs required by this Act. In addition to other amounts appropriated for the fiscal year ending August 31, 1993, the sum of \$200,000 is appropriated for that period from the general revenue fund to the Texas Commission on Alcohol and Drug Abuse for the development of drug abuse educational programs required by this Act.

SECTION 3. (a) This Act takes effect September 1, 1991, and applies only to persons convicted of a felony committed on or after that date. To the extent that this Act requires the continuation of the period of suspension of the driver's license of a person convicted of certain drug offenses and prohibits the issuance or reinstatement of a driver's license of a person convicted of certain offenses if the person does not attend and successfully complete an educational program on the dangers of drug abuse, this Act applies only to convictions that occur on or after August 31, 1993.

(b) For purposes of this section, an offense was committed before September 1, 1991, if any element of the offense occurred before that date.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendment to S.B. 16 by a viva voce vote.

SENATE BILL 75 WITH HOUSE AMENDMENT

Senator Barrientos called S.B. 75 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Black

Amend S.B. 75 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation, composition, and functions of the Texas State Board of Public Accountancy and the regulation of a person who practices public accountancy; creating a scholarship program for certain accounting students to be administered by the Texas Higher Education Coordinating Board; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1A, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1A. SHORT TITLE. This Act may be cited as the Public Accountancy Act of 1991 ~~(1979)~~.

SECTION 2. Sections 2(a) and (c), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this Act:

(1) "Board" means the Texas State Board of Public Accountancy.

(2) "Person" means an individual, partnership, corporation, or other legal entity.

(3) "Firm" means a sole proprietorship, partnership, professional or other corporation, or other business engaged in the practice of public accountancy.

(4) "State" includes any state, territory, or insular possession of the United States and the District of Columbia.

(5) [(4)] "Corporation" means a professional public accounting corporation organized under The Texas Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes), or other corporation authorized by applicable statutes, or an equivalent law of another state, territory, or foreign country.

(6) [(5)] "Practice of public accountancy" means:

(A) the offer to perform or performance by a person holding himself out to the public as a certificate or registration holder for a client or potential client, or the performance by a certificate or registration holder for a client [of a sole proprietorship, partnership, or professional corporation an office of which is required to be registered under Section 10 of this Act,] of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(i) [(A)] the issuance of reports on, or the preparation of, financial statements;

(ii) [(B)] the furnishing of management or financial advisory or consulting services; and

(iii) [(C)] the preparation of tax returns or the furnishing of advice or consultation on tax matters; or

(B) when performed by a person or practice unit licensed under this Act, the preparation of, or reporting on, a financial statement when the financial statement or report is to be used by an investor, except for a report prepared for internal use by the management of an organization, a third party, or a financial institution, or the preparation of a tax return if the tax return is filed with a taxing authority, as well as the supervision of those activities.

(7) "Practice unit" means an office of a firm that is required to be registered with the board for the purpose of practicing public accountancy.

(8) "Sole proprietorship" means an unincorporated firm that is owned and controlled by one person engaged in the practice of public accountancy.

(c) For the purpose of the definition of "practice of public accountancy," a person holds the person [himself or herself] out to the public as the holder of a certificate or registration by representing that the person holds a certificate or registration. A representation includes an oral or written communication stating that the person holds a certificate or registration. Written communication includes a letterhead, business card, office sign, or advertisement. Holding out to the public as the holder of a certificate or registration does not include:

(1) the display of the original of a valid certificate or registration unless a valid license is also displayed;

(2) a representation made by a faculty member of an educational institution only in connection with the duties of the person as a faculty member; or

(3) a representation in a book, article, or other publication or a representation made in connection with the promotion of the publication, unless the [except a] representation [in a publication or promotion that] includes an offer to perform a service or to sell a product other than the publication.

SECTION 3. Section 3, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. ACTS NOT RESTRICTED. (a) Nothing contained in this Act shall be construed as restricting ~~applying to restrict~~ any official act of any county auditor or other officer of the state, county, municipality, or other political subdivision or any officer of a federal department or agency or of their assistants, deputies, or employees while working in their official capacities.

(b) Nothing contained in this Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of a certified public accountant or public accountant or a firm ~~or a partnership, or corporation~~ composed of certified public accountants and/or public accountants holding a license or licenses to practice issued by the board; provided, however, that such employee shall not issue any accounting or financial statement over the employee's ~~his~~ own name.

~~(c) A certified public accountant or a public accountant of another state, or a partnership or professional corporation composed entirely of certified public accountants or of public accountants of another state, or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accountancy in such country, may temporarily practice in this state on professional business incident to the person's regular practice outside this state, if such temporary practice is conducted in conformity with the laws of Texas and the regulations and rules of professional conduct promulgated by the board and if the accountant, partnership, or corporation has a permit issued by the board. The accountant, partnership, or corporation may apply for a permit by submitting an application and a fee not to exceed \$100, as provided by board rule. The board may not issue a permit that is valid for more than 180 days or issue more than one permit to a person during any three-year period.]~~

SECTION 4. Section 4, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY. (a) The Texas State Board of Public Accountancy shall consist of 15 members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the governor with the advice and consent of the senate. Ten ~~Twelve~~ members shall be certified public accountants, at least eight ~~nine~~ of whom shall be sole practitioners or owners or employees of firms engaged ~~are~~ in public practice on the date of their appointment to the board. Five ~~Three~~ members shall be public member representatives who are not licensed under this Act and who are not financially involved in an organization subject to regulation by the board. The term of office of each member of the board shall be six years and each member shall continue until a successor is appointed.

(a-1) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of public accountancy;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An ~~A member of the board may not be an~~ officer, employee, or paid consultant of a Texas trade association in the field of public accountancy may not

be a member of the board or an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [of persons governed by this Act].

(c) A person who is the spouse of [member or employee of the board may not be related within the second degree of affinity or within the second degree of consanguinity to a person who is] an officer, manager [employee], or paid consultant of a Texas trade association in the field of public accountancy may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [of persons governed by this Act].

(c-1) For the purposes of Subsections (b) and (c) of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A board member who has served as a member for all or part of six consecutive years shall not be eligible for reappointment until two years shall have elapsed between the end of the member's most recent [the term of his last prior] appointment and the beginning of the term of a new appointment.

(e) Each member of the board is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the board and to \$100 for each day that [on which] the member conducts board business. The board by rule may determine activities that constitute board business.

(f) Appointments to the board shall be made without regard to the race, color, handicap [creed], sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the board if a member:

(1) does not have at the time of the appointment the qualifications required by Subsection (a) of this section;

(2) does not maintain during service on the board the qualifications required by Subsections (a) and (a-1) of this section;

(3) violates a prohibition established by Subsection (b), (c), or (h) of this section;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled meetings of the board and a committee of the board that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board [Each member of the board shall be present for at least one-half of the number of days on which the board holds regularly scheduled meetings during a calendar year. The failure of a board member to be present for at least the minimum number of days is grounds for removal from office].

(g-1) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists. If the executive director has knowledge that a potential ground for removal exists, the executive director must notify the executive committee of the board of the ground. The chairman shall notify the governor that a potential ground for removal exists.

(h) A person may not serve as a member of the board or act as the general counsel to the board if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board [422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas

Civil Statutes), may not act as a general counsel to the board or serve as a member of the board].

(i) The governor shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor.

SECTION 5. Section 5, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. POWERS AND DUTIES OF BOARD. (a) The board shall administer and carry out this Act and shall:

(1) elect annually from its members a [chairman,] vice-chairman, secretary, treasurer, and other officers as the board considers necessary, to serve with the chairman on the executive committee;

(2) keep records of all proceedings and actions by and before the board;

(3) keep a seal which shall be judicially noticed; and

(4) employ an executive director, [personnel and] independent contractors, and personnel selected by the executive director as are necessary to assist it in the performance of its duties.

(b) A majority of the board constitutes a quorum for the transaction of business.

(c) A member [The members] of the board who is [are] not a certified public accountant has [accountants have] all the authority, responsibility, and duties of any other member of the board.

(d) [(c)] The board shall prepare [keep an] information of public interest describing the functions of [file about each complaint filed with] the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies [If a written complaint is filed with the board relating to a licensee under this Act, the board shall notify the complainant of each change in the status of the complaint, including the final disposition].

(e) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may require that the notification be provided:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this Act; or

(2) in a bill for service provided by an individual or entity regulated under this Act.

(f) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(g) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(h) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(i) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

SECTION 6. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 5A to read as follows:

Sec. 5A. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive director or the executive director's representative shall develop an intra-agency

career ladder program. The program shall require intra-agency postings of all non-entry-level positions concurrently with any public posting.

(b) The executive director or the executive director's representative shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(c) The executive director or the executive director's representative shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 7. Section 6, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. RULEMAKING. (a) The board shall adopt rules deemed necessary or advisable to effectuate this Act, including the adoption of rules of professional conduct in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to ensure [insure] that the conduct and competitive practices of licensees serve the purposes of this Act and the best interest of the public. The board in its rules of professional conduct shall not restrict advertising or competitive bidding by licensees except if necessary to:

(1) ensure [insure] that advertising, price information, and other communications from licensees are informative, free of deception, and consistent with the professionalism expected and deserved by the public from those engaged in the practice of public accountancy;

(2) ensure [insure] that the conduct and dealings of licensees are free from fraud, undue influence, deception, intimidation, overreaching, harassment, and other forms of vexatious conduct, including uninvited solicitations to perform professional accounting services; provided, however, that the term "uninvited solicitations" shall not be deemed to include advertising using mass media; or

(3) regulate the competitive practices of licensees to the extent necessary to ensure [insure] that:

(A) contracts or engagements between a licensee and any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility for the performance of professional accounting services are neither [not] solicited nor [or] awarded on the basis of competitive bids submitted for such contracts or engagements in violation of law;

(B) contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person or entity not a party to the contract or engagement for the purpose of inducing

reliance thereon and which are entered into on the basis of competitive bids, contain information necessary to protect the public; or

(C) no licensee engages in any competitive practice which would impair the independence of or quality of services rendered by any licensee or which would impair or restrict the opportunity for members of the public to seek and secure high quality professional accounting services at reasonable prices or which would unreasonably restrict competition among licensees.

(b) The board may by rule recognize areas of specialization in the practice [field] of accountancy if the area of specialization is generally recognized by other bodies that regulate or issue authoritative pronouncements in the field of public accountancy.

(c) This section does not prohibit the board from adopting rules necessary or advisable to carry out Section 15A, 15B, 21, or 21A of this Act.

SECTION 8. Section 7, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), as amended by Chapters 584 and 892, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 7. EXPENSES OF BOARD. (a) The fees and other money received by the board under this Act shall be deposited in the state treasury to the credit of a special fund to be known as the public accountancy fund and may be used only for the administration of this Act. This subsection does not apply to money subject to deposit under Section 22A of this Act.

(b) The board shall file annually [an annual report of its activities] with the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the board during the preceding fiscal year [Legislative Budget Board]. The annual report must be in the form and reported in the time provided by the General Appropriations Act [shall include a summary statement of all receipts and disbursements of the board for each fiscal year. The board's funds shall be audited by the state auditor according to the state audit plan].

(c) The board may solicit, contract for, and accept money and other assistance from any source to carry out the powers and duties under this Act.

SECTION 9. Section 8, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (d), (f), and (g) and by adding Subsection (i) to read as follows:

(b) No firm [partnership or corporation] shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm [such partnership or corporation] is composed of certified public accountants unless the firm [such partnership or corporation] is registered as a firm [partnership or corporation] of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of the firm's [such partnership's or corporation's] offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(d) No firm [partnership or corporation] shall assume or use the title or designation "Public Accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm [such partnership or corporation] is composed of public accountants, unless the firm [such partnership or corporation] is registered as a firm [partnership or corporation] of public accountants under this or prior Acts or as a firm [partnership or corporation] of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of the firm's [such partnership's or corporation's] offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he is an

accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement, unless he has complied with the applicable provisions of this Act; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from signing ~~[affixing his signature to]~~ any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office held ~~[which he holds]~~ in such organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No licensee shall assume or use a name which is misleading in any way as to the legal form of the firm or as to the persons who are partners, officers, or shareholders of the firm. The name or designation any partnership or corporation may assume or use shall contain the ~~[personal name or]~~ names of one or more individuals presently or previously partners or shareholders ~~[members]~~ thereof. The ~~[, and the]~~ name or designation any individual may assume or use shall contain the ~~[his]~~ name of the individual. No trade name or descriptive words indicating character or grade of service offered may be used or included except as authorized by rules promulgated by the board.

(i) The board may enforce this section by seeking an injunction or filing a complaint:

(1) against a license holder under this Act in the applicable court in Travis County, Texas; or

(2) against a person who is not licensed or registered under this Act in the applicable court in the county where the person resides.

SECTION 10. Section 9, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. ~~[ANNUAL]~~ LICENSES TO PRACTICE. (a) Except as provided by Subsection (f) of this section, licenses shall be issued by the board to the following upon the payment of fees hereinafter specified:

(1) holders of the certificate of "Certified Public Accountant" issued under this or prior Acts; and

(2) such persons as are registered with the board under the provisions of this or prior Acts.

(b) There shall be paid to the board by all persons referred to in Subsection (a) of this section a biennial ~~[an annual]~~ license fee not to exceed \$250 ~~[\$100]~~. A license ~~[All licenses]~~ shall expire on the 31st day of December of the applicable ~~[each]~~ year or on such other date or dates as set by the board pursuant to Subsection (d) of this section. A license shall be renewed for a period of two years ~~[one year]~~ upon the payment of a fee of not more than \$250 ~~[\$100]~~, the board being hereby given the authority and duty to determine the amount of such renewal fee not less than 30 days prior to the beginning of the biennial period ~~[license year]~~ to which it applies and to mail notices thereof before ~~[each year by]~~ that date. The board shall provide that half of the licenses subject to this subsection expire in each even-numbered year and that the other half expire in each odd-numbered year. The board shall prorate the license fee for an individual whose license term is for less than two years based on the provision by the board that half of the licenses expire in consecutive years.

(c) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board. A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the initial examination fee for the license. If the

person's license has been expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the initial examination fee for the license. ~~[A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, a late fee of \$20.]~~ A person who fails to pay the renewal fee and the late fee before the first anniversary of the due date of the renewal fee may receive a license by submitting an application, all accrued license fees and late fees, and the direct administrative costs incurred by the board in issuing the renewal license. The board shall by rule provide the information that must be contained in the application. The board shall have no authority to waive the collection of any fee or penalty.

(d) The board by rule may adopt a system under which licenses expire on a date or dates other than December 31. Dates relating to expiration and issuance of licenses shall be adjusted accordingly. For the biennium [year] in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee shall be payable.

(e) The board by rule may adopt reduced license fees for initial licenses and for renewal licenses of persons who do not practice accountancy because of retirement or permanent disability.

(f) The board may not issue an initial or renewal license to a person that [who] does not meet the licensing requirements of this Act or rules adopted under this Act. After notice and hearing as provided in Section 22 of this Act, the board may revoke a license that was issued or renewed in violation of this Act or a rule adopted under this Act.

(g) The board may increase each license fee collected under this section in an amount necessary to produce funds adequate for the enforcement of this Act. The fee increase shall be deposited as provided by Section 22A of this Act.

SECTION 11. Section 10, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) The following persons shall be registered with the board for the practice of public accountancy in this state:

(1) all individuals registered as Public Accountants under the Public Accountancy Act of 1945 and all individuals registered under Section 14 of this Act;

(2) a firm [partnerships] qualified under this or prior Acts; and

(3) ~~[corporations qualified under this or prior Acts, and~~

~~[(4)]~~ each office established or maintained in this state for the practice of public accountancy in this state by a firm [sole proprietorship, partnership, or corporation] of certified public accountants or by a firm [sole proprietorship, a partnership, or corporation] of public accountants or by an individual registered under Section 14 of this Act. Each such office shall be under the direct supervision of a resident manager who must [may] be either an owner, partner, shareholder, or [a principal or a staff] employee holding a license issued by the board which is in full force and effect; provided that the title or designation "Certified Public Accountant" or the abbreviation "CPA" shall not be used in connection with such office unless such resident manager is the holder of a certificate as a certified public accountant and a license issued by the board, both of which are in full force and effect. Such resident manager may serve in such capacity only in one office at the same time except as authorized by rule of the board. The board shall by regulation prescribe the procedure to be followed in effecting such registrations.

(c) A certified public accountant of another state, or a partnership or professional corporation composed entirely of certified public accountants of

another state, or an accountant who holds a certificate, degree, or license in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, may temporarily practice in this state on professional business incident to the person's regular practice outside this state, if:

(1) the temporary practice is conducted according to the laws of this state and the rules of professional conduct adopted by the board; and

(2) the accountant, partnership, or corporation applies for a permit by submitting an application and a fee not to exceed \$100, as provided by board rule.

SECTION 12. Section 11, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. RULES AND REQUIREMENTS APPLICABLE TO SOLE PROPRIETORSHIP ~~[PARTNERSHIPS AND CORPORATIONS]~~. (a) A sole proprietorship may engage in the practice of public accountancy in this state only if:

(1) the sole proprietor is a certified public accountant of this state in good standing;

(2) each resident manager in charge of an office of the firm in this state is a certified public accountant of this state in good standing; and

(3) the sole proprietorship is registered with the board under Subsection (b) of this section.

(b) Application for registration under this section must be made on the affidavit of the sole proprietor. The affidavit must set forth the sole proprietorship name, the post office address in this state, the address of the principal office wherever located, and the name of the person designated as resident manager of each office in this state.

(c) Each office of a sole proprietorship in this state is required to register and hold a license issued under Section 9 of this Act.

(d) A sole proprietorship is eligible for registration under this section if the board determines that the applicant under this section satisfies the requirements of Subdivisions (1) through (3) of Subsection (a) of this section.

(e) Only a sole proprietorship that is registered and holds a license issued under Section 9 of this Act may use the words "Certified Public Accountant" or the abbreviation "CPA" in connection with its sole proprietorship.

(f) Notification shall be given to the board not later than the 31st day after the date of the admission or withdrawal of a resident manager or a change in other information contained in the affidavit.

(g) The board by rule shall define, for the purposes of this section, the meaning of the term "good standing."

~~[(a) All rules and statutory requirements applying to partnerships apply to corporations. All rules and statutory requirements applying to partners of partnerships apply to incorporators, stockholders, officers, and directors of corporations. All rules and statutory requirements governing employees or agents of partnerships apply to employees or agents of corporations.]~~

~~[(b) All rules and statutory requirements applying to partnerships apply to the partners of the partnership. Rules and statutory requirements applying to corporations apply to incorporators, stockholders, officers, and directors of corporations.]~~

SECTION 13. Section 12, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. CERTIFICATION OF CERTIFIED PUBLIC ACCOUNTANTS.
(a) The certificate of a "Certified Public Accountant" shall be granted by the board to any person who:

- (1) is of good moral character;
- (2) meets the education requirements of this state to take an examination for certification as set forth in Subsection (e) of this section;
- (3) has passed the uniform CPA examination prepared and graded by the American Institute of Certified Public Accountants or, if it would result in a greater degree of reciprocity, by the National Association of State Boards of Accountancy;
- (4) meets the work experience requirements determined by board rule as set forth in Subsection (h) of this section;
- (5) has passed an examination on the rules of professional conduct as determined by board rule;
- (6) takes an oath, administered by a member of the board or by another person authorized to administer oaths, to support the laws and Constitution of the United States and of this state and the rules adopted by the board; and
- (7) pays a fee set by board rule, not to exceed \$50, for the certificate of "Certified Public Accountant" issued by the board under this section.

(b) The board may accept the completion of the uniform CPA examination given by the authority in any other state if the examination was prepared and graded by the American Institute of Certified Public Accountants or, if it would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy and the application met the requirements in effect in this state at the time credit was earned. The board, by rule, shall establish a fee, not to exceed \$100, for receiving credits from another licensing authority. The board may transfer to the licensing authority in any other state active credits earned as a result of completing the uniform CPA examination in this state. The board, by rule, shall establish a fee, not to exceed \$50, for transferring credits to another licensing authority.

(c) A candidate for a certified public accountant certificate who has completed the examination under this section may not have the status of a certified public accountant until the candidate has completed the requisite work experience and has received notice from the board of certification as a certified public accountant.

(d) The board shall ensure that an individual eligible to receive a "Certified Public Accountant" certificate or to take the uniform CPA examination is of good moral character as demonstrated by a lack of history of dishonest or felonious acts. The board by rule may adopt a system to investigate the background of an applicant under this Act. The board may obtain criminal history record information maintained by the Department of Public Safety of the State of Texas, the Federal Bureau of Investigation identification division, and other law enforcement agencies to investigate the qualifications of an applicant for certification as a "Certified Public Accountant," an individual applicant for registration under this Act, or an applicant to take the uniform CPA examination. The board may require the applicant to submit a complete set of fingerprints. If an applicant does not provide a complete set of fingerprints on the request of the board, the board may either deny the "Certified Public Accountant" certificate to the applicant or deny the applicant's application to take the uniform CPA examination.

(e) An applicant to take the uniform CPA examination:

(1) before September 1, 1997, must meet the following education requirements before filing the initial application for the uniform CPA examination for receiving a certificate as a "Certified Public Accountant":

(A) hold a baccalaureate or graduate degree, or equivalent educational experience as determined by board rule, conferred by an institution of higher education recognized by the board;

(B) the completion of courses recognized by the board reflecting not fewer than 30 semester hours or quarter-hour equivalents in accounting courses, as defined by board rule; and

(C) the completion of courses recognized by the board reflecting not fewer than 20 semester hours or quarter-hour equivalents of related courses in other areas of business administration; and

(2) after September 1, 1997, must meet the following education requirements before filing the initial application for the uniform CPA examination for receiving a certificate as a "Certified Public Accountant":

(A) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by an institution of higher education recognized by the board;

(B) the completion of courses recognized by the board reflecting not fewer than 150 semester hours or quarter-hour equivalents;

(C) the completion of courses recognized by the board reflecting not fewer than 30 semester hours or quarter-hour equivalents in accounting courses, as defined by board rule, of which at least 20 semester hours or quarter-hour equivalents are core accounting courses as defined by board rule; and

(D) the completion of college and university courses recognized by the board reflecting not fewer than 20 semester hours or quarter-hour equivalents of related courses in other areas of business administration.

(f) A part-time student who is enrolled in an accounting program on September 1, 1994, who notifies the board on or before September 1, 1997, of the student's intent to sit for examination, may sit for the examination under the requirements in effect on August 31, 1997, on completion of the accounting program and on being awarded a baccalaureate degree. However, the part-time student must complete the accounting program not later than September 1, 2002. For the purpose of this section, a part-time student is a student who is enrolled in fewer than 12 semester hours in each semester that the student attends a college or university.

(g) Except for a part-time student identified in Subsection (f) of this section, a person who has received a baccalaureate degree but has not completed the other certification requirements of this Act after September 1, 1997, may sit for the examination but not receive a certificate until the person has completed all of the certification requirements of this Act. This subsection expires January 1, 2000.

(h) The board shall ensure that an individual eligible to receive the certificate of a "Certified Public Accountant" has completed a minimum of two years of work experience under the supervision of a certified public accountant unless the individual has completed 150 semester hours of college credits or has a graduate degree, in which case, a minimum of one year of work experience under the supervision of a certified public accountant is required. The board, by rule, shall define acceptable work experience. The board is the final authority on all work experience, and may not consider a petition from another entity in resolving a dispute regarding this section.

[(1) who is a citizen of the United States or who, if not a citizen, has lived in the State of Texas for the 90 days immediately preceding the date of submitting to the board the initial application to take the written examination conducted by the board for the purpose of granting a certificate of "Certified Public Accountant" or has maintained permanent legal residence in Texas for the six months immediately preceding the date of submission;

[(2) who shall have qualified to take the examination for the certificate in this state;

[(3) who has attained the age of 18 years;

[(4) who is of good moral character;

[(5) who, before September 1, 1997, meets the following requirements of education and experience:

~~[(A) the experience requirements shall be for the number of years as provided in Paragraph (B) below and shall be in public practice under the supervision of a certified public accountant or under the supervision of a certified public accountant in an activity comparable to public practice as determined by board rule, or in any combination of these types of experience; and all such experience must be in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters; and all such experience must be satisfactory to the board; and~~

~~[(B) the education requirement shall be either:~~

~~[(i) a baccalaureate degree conferred by a college or university recognized by the board, with a major in accounting, or with a nonaccounting major supplemented by what the board determines to be substantially the equivalent of an accounting major, with not less than 30 semester hours or quarter-hour equivalents of accounting, of which at least 20 semester hours or quarter-hour equivalents are core accounting courses as defined by board rule; and 20 additional semester hours or quarter-hour equivalents of related courses in other areas of business administration; and the experience requirement shall be two years of the experience described by Paragraph (A) above;~~

~~[(ii) a baccalaureate degree conferred by a college or university recognized by the board, with at least 20 semester hours or quarter-hour equivalents of core accounting courses as defined by board rule; and the experience requirement shall be four years of the experience described by Paragraph (A) above; or~~

~~[(iii) a master's degree in accounting or business administration conferred by a college or university recognized by the board or a professional degree in accounting designated other than as a master's degree but judged by the board to be equivalent to that degree and to be at an appropriate professional level; provided that in either case the candidate has satisfactorily completed at least 30 semester hours or quarter-hour equivalents in accounting, of which at least 20 semester hours or quarter-hour equivalents are core accounting courses as defined by board rule; and 20 semester hours or quarter-hour equivalents in other areas of business administration and such related subjects as the board shall determine to be appropriate; and the experience requirement shall be two years of the experience described by Paragraph (A) above;~~

~~[(6) who, after August 31, 1997, completes the following requirements:~~

~~[(A) a baccalaureate degree conferred by a college or university recognized by the board, with a major in accounting, or with a nonaccounting major supplemented by what the board determines to be substantially the equivalent of an accounting major, with not less than 30 semester hours or quarter-hour equivalents of accounting, of which at least 20 semester hours or quarter-hour equivalents are core accounting courses as defined by board rule; and 20 additional semester hours or quarter-hour equivalents of related courses in other areas of business administration;~~

~~[(B) an additional number of accounting and business semester hours or quarter-hour equivalents of study in a business degree program of a college or university recognized by the board, that when added to the classwork required for the baccalaureate degree equals 150 or more semester hours or quarter-hour equivalents, of which at least 42 semester hours or quarter-hour equivalents are in accounting; provided that a grade of at least a "C" must be obtained on each accounting course hour or quarter-hour equivalent applied toward satisfying the requirements of this paragraph; and~~

~~[(C) two years of experience in public practice, or in an activity comparable to public practice as determined by board rule, under the supervision of a licensed certified public accountant; and~~

~~[(7) who shall have passed the uniform CPA examination prepared and graded by the American Institute of Certified Public Accountants or the National Association of State Boards of Accountancy, testing the candidate's knowledge of theory of accounts, accounting practice, auditing, commercial law affecting public accounting, and such other subjects as the board shall determine to be appropriate. A grade of at least 75 percent on each subject shall be required as a passing grade.~~

~~[(b) The educational requirement of Paragraph (A) of Subdivision (6) of Subsection (a) of this section must be satisfied, except as provided by Subsection (h) of this section, before taking an examination under Section 15 of this Act. The educational requirement of Paragraph (B) of Subdivision (6) of Subsection (a) of this section must be satisfied before certification.~~

~~[(c) A five-year baccalaureate or a graduate degree conferred by a college or university recognized by the board and determined to have the same number of semester hours or quarter-hour equivalents in accounting and other courses as required by Paragraphs (A) and (B) of Subdivision (6) of Subsection (a) of this section meets the requirements of those subsections.~~

~~[(d) Any candidate who meets the education requirements under Subdivision (5) or (6) of Subsection (a) of this section and who is duly enrolled as an attorney by the Supreme Court of Texas shall be given credit for commercial law without taking the written examination on commercial law. The credit for commercial law shall be granted only after the candidate has passed at least one other subject on the examination.~~

~~[(e) The board may by rule provide for granting credit to a candidate for his satisfactory completion of the uniform CPA examination in any of the subjects specified in Subdivision (7) of Subsection (a) of this section given by the licensing authority in any other state.~~

~~[(f) None of the education or experience requirements specified above shall apply to a candidate who is registered as a public accountant under The Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes), and holds a license issued under this Act.~~

~~[(g) A candidate who has met the education requirements shall be eligible to take the examination in all subjects without waiting until he meets the experience requirements, provided that the candidate also meets the requirements of Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section.~~

~~[(h) A candidate for the certificate of certified public accountant who has successfully completed the examination under Subdivision (7) of Subsection (a) of this section shall have no status as a certified public accountant, unless and until the candidate has the requisite experience and has received notice of certification as a certified public accountant.~~

~~[(i) The holder of a certificate heretofore issued under the provisions of prior Acts shall not be required to secure a new certificate as a certified public accountant under this Act.~~

~~[(j) All individuals who have qualified to sit for the examination under The Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes) or this Act continue to qualify to sit for the examination as long as the initial qualifications are met, and their education and experience requirements for certification are those in effect on the date the candidate made initial application for examination in this state.~~

~~[(k) Every person who has met the requirements of Subsection (a) of this section and is ready to receive a certificate as a "Certified Public Accountant" shall before receiving such certificate take an oath that the person will support the Constitution of the United States and of this state and the laws thereof and will comply with the rules of professional conduct promulgated under this Act. This oath shall be~~

administered by a member of the board or by such other person as may be authorized by law to administer oaths.

~~[(l) An individual who is currently enrolled in a sufficient number of semester hours or quarter-hour equivalents to fulfill the educational requirements of Subdivision (5) or (6) of Subsection (a) of this section is eligible to attempt the examination required by Subdivision (7) of Subsection (a) of this section. The results of the examination are valid only if the individual submits to the board, not later than 15 days before the date of the uniform grade release for the examination, satisfactory evidence that the individual completed the requirements of Subdivision (5) or (6) of Subsection (a) of this section. In the submission, the individual must include documentation of all grades and credits earned by the individual. An individual who takes the examination under this subsection and fails to submit the required evidence of completion before the deadline forfeits all examination fees.~~

~~[(m) The board may collect a fee not to exceed \$50, as set by board rule, for each certificate of "Certified Public Accountant" issued by the board under this section.]~~

SECTION 14. Section 13, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. RECIPROCITY. (a) The board shall issue a certificate of "Certified Public Accountant" to a person holding a certificate issued by another state if:

(1) the person passed the uniform CPA examination and the person's grades on the examination would have been passing grades in this state on the date the applicant passed the examination;

(2) the person:

(A) meets the current requirements for issuance of a certificate in this state, other than the requirement providing the grades necessary to pass the uniform CPA examination;

(B) met, on the date the person was issued a certificate by the other state, the requirements in effect on that date for issuance of a certificate in this state; or

(C) has four years of experience practicing public accountancy after passing the uniform CPA examination, provided that the experience occurred within the 10 years immediately preceding the application and satisfies requirements provided by board rule; and

(3) the person met, during the three license years preceding the date of the application, the continuing professional education requirements that apply to a licensee under this Act.

(b) The board may issue a certificate by reciprocity to the extent required by treaties entered into by the government of the United States.

(c) The board shall charge for the issuance of a certificate of "Certified Public Accountant" under this section a fee of not more than \$250 [~~\$150~~].

SECTION 15. Sections 14(a) and (b), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A certified public accountant of another state or the holder of a certificate, license, or degree authorizing him to practice public accountancy in a foreign country may register with the board as a certified public accountant of such other state or as holding such certificate, license, or degree of a foreign country, if the board determines that the standards under which the applicant became a certified public accountant or received such certificate, license, or degree were as high as the standards of this state at the same time for granting the certificate of certified public accountant. A person so registered must [may] describe himself as a certified public accountant of the state which issued the certificate or [may] use the title held in a foreign country, and [provided that] the state or the country must be [is] indicated.

(b) The registered person must pay the initial [annual] license fee provided in Section 9 of this Act and a processing fee set by the board of not more than \$250 [\$150].

SECTION 16. Section 15, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. EXAMINATIONS, REEXAMINATIONS, AND FEES. (a) All examinations provided by this Act shall be conducted by the board. The examination for the certificate of "Certified Public Accountant" shall take place as often as the board deems necessary, but not less frequently than once each year. The board as it considers appropriate may use all or part of the Uniform CPA Examination and any related service available from the American Institute of Certified Public Accountants or, if it would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy. The examination must test the candidate's knowledge of accounting, auditing, and such other subjects as the board determines to be appropriate. If the examination is secured by the preparer, the board may not release a copy of any of the questions or answers to any individual or organization. The board by rule may adopt a system for the maintenance of the security and integrity of the examination process.

(b) The board may establish an "application of intent" for an individual pursuing a certificate as a "Certified Public Accountant." The board shall maintain an application filed under this subsection as an active application for two years from the date of submission.

(c) The board, by rule, may:

(1) set the time, date, and place for the examination;

(2) establish methods for applying for and conducting the examination;

(3) determine the method for grading the examination and reporting scores to an examination candidate; and

(4) establish criteria for a passing score that results in credit.

(d) A grade of at least 75 percent on each subject of the examination is required as a passing grade.

(e) The board shall send to the examination candidate the candidate's results not later than the 30th day after the date that the results were received by the board, unless board action is pending and the individual is precluded from receiving the examination results until the board action is resolved.

(f) A candidate who fails all or part of an examination is entitled to apply for a subsequent examination, subject to the satisfaction of the board that the candidate continues to meet the requirements of this Act relating to moral character and education.

(g) A candidate who, in a single examination, passes two or more subjects shall receive conditional credit as provided by board rule, provided that the candidate must take also all parts of the examination for which the candidate is eligible and attain a minimum grade of 50 percent on each part not passed at that examination. A passing score earned on a subsequent examination shall be awarded credit if that candidate takes all parts of the examination for which the candidate is eligible and the candidate attains a minimum grade of 50 percent on each part not passed at that sitting. A candidate shall be considered by the board to have passed the examination when the candidate has received credit for all subjects under one of the following provisions:

(1) a candidate that received conditional credit before September 1, 1979, has until August 31, 1997, to pass the remaining subjects;

(2) a candidate that received conditional credit after August 31, 1979, and before September 1, 1989, has the next 10 consecutive examinations to pass the remaining subjects; and

(3) a candidate that received conditional credit after September 1, 1989, has the next six consecutive examinations to pass the remaining subjects.

(h) If the uniform CPA examination is restructured, the board by rule shall determine the manner in which a credit for a subject is integrated into the new structure.

(i) The board may transfer to the licensing authority in any other state active credits earned as a result of completing all or part of the uniform CPA examination in this state. The board, by rule, shall establish a fee, not to exceed \$50, for transferring credit to another examining jurisdiction.

(j) The board may accept the partial completion of the uniform CPA examination given by the appropriate authority in any other state. The board, by rule, shall establish a fee, not to exceed \$100, for receiving credit from another examining jurisdiction. For the board to accept the transfer of credits:

(1) the examination must be prepared and graded by the American Institute of Certified Public Accountants or, if it would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy;

(2) the credits must be active in the state of origin; and

(3) the applicant must meet the requirements in effect in the state of origin at the time credit was earned so long as that state's standards are equal to or higher than those prescribed in this Act.

(k) The board, by rule, may charge a filing fee, not to exceed \$100, payable to the board by the applicant at the time of making the initial application to take the uniform CPA examination. For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee, not to exceed \$250, among the parts of the examination that the candidate is eligible to attempt on a particular examination date. Examination or reexamination fees shall be payable by the applicant at the time of making the application for examination or reexamination. If an applicant fails to attend an examination and shows to the board a satisfactory reason for the failure, the board may provide by rule for the refund of the examination or reexamination fees submitted by the applicant. [Not later than the 30th day after the day on which the board receives an individual's examination results, the board shall send to the individual the individual's examination results:

[(c) A candidate who fails shall have the right to apply for additional examinations, subject to the satisfaction of the board that the candidate continues to meet the requirements of Subdivisions (1), (2), and (4) of Subsection (a) of Section 12 of this Act.

[(d) Any candidate who at the time of filing his application to take the examination or reexamination had, before September 1, 1979, any examination credits; or who, after that date, shall pass or receive credit for, in a single examination, two or more subjects (accounting practice counting as two subjects); or who is registered as a public accountant under The Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes) and passes one or more subjects after the effective date of this Act, shall have the right, subject to the approval of his application for reexamination under Subsection (c) of this section, to be reexamined in the remaining subjects only at subsequent examinations held by the board, except that the candidate must pass the remaining subjects within the next 10 consecutive examinations if the candidate passed the qualifying two or more subjects before September 1, 1989, or the next six consecutive examinations if the candidate passed the qualifying two or more subjects after August 31, 1989, and the candidate may receive credit for one or more subjects in any subsequent examination. When the candidate shall have received credit for all subjects, the candidate shall then be considered to have passed the examination. A candidate having two or more credits

on September 1, 1979, must pass the remaining parts of the examination before September 1, 1997.

~~[(e) If the uniform CPA examination is restructured, the board by rule shall determine the manner in which a credit for a subject is integrated into the new structure.~~

~~[(f) The board shall charge for the first examination of a candidate for certification as a "Certified Public Accountant" a total fee of not more than \$250, which shall be payable by the applicant at the time of making the initial application. For each subsequent examination or reexamination, the board by rule shall apportion the amount of the total fee among the parts of the examination and a candidate may be required only to pay for the parts of the examination that the candidate is eligible to attempt on a particular examination date. Reexamination or subsequent examination fees shall be payable by the applicant at the time of making the application for the subsequent examination or reexamination. If an applicant fails to be present for an examination and shows to the board satisfactory reason for such failure, the board may provide by rule for the refund of any fees submitted by the applicant.]~~

~~[(l) Not later than the 91st day after the date of receipt of the examination results, an [(g) An] applicant who has failed any such examination or reexaminations shall have a right to inspect [request a copy of] the questions and the answers thereto made by him upon any such examination with the grade clearly shown. An inspection shall be by appointment at the board's offices during regular office hours, and copies of the examination or answers may not be made[, and the board shall forthwith comply with such request by delivering by registered or certified mail to such applicant a true copy of the questions and his answers thereto. The board may charge such applicant a reasonable fee therefor, and such request by the candidate must be made within six months after the grades are mailed to said candidate and not thereafter].~~

~~[(m) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 120 days after the examination date, the board shall notify the examinee of the reason for the delay before the 120th day.~~

~~[(n) If requested in writing by a person who fails a licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.~~

SECTION 17. Section 15A, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15A. CONTINUING PROFESSIONAL EDUCATION. (a) An individual holding a license under this Act shall complete at least 120 hours of continuing professional education every three years. The individual shall complete at least 20 hours of continuing professional education each year. A continuing professional education course shall be accepted by the board only if the course contributes directly to the professional competence of the licensee. The board by rule shall provide for the biennial reporting of continuing professional education to coincide with the license renewal date.

(b) The board by rule may exempt certain individuals, including disabled and retired individuals and licensees not associated with accounting, as defined by board rule, from all or a portion of the requirements of this section.

SECTION 18. Section 15B, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15B. QUALITY REVIEW. (a) The board shall by rule provide for a quality review program for the review of the work product of licensees under this Act to the extent determined necessary by the board to comply with any applicable standards adopted by generally recognized standard-setting bodies in the field of accounting.

(b) The board shall register ~~[by rule provide for the combining of two or more licensees into]~~ practice units. ~~The [if a licensee is a member of a practice unit, the] board shall by rule provide for review of the work product of the practice unit in lieu of reviewing the work product of the licensee.~~

(c) A report, statement, memorandum, transcript, finding, record, or working paper prepared, and an opinion formulated, in connection with any positive enforcement, quality review, or peer review is privileged and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person except the board and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing. However, this privilege does not exist if the material in question is involved in a dispute between a reviewer and the person or entity being reviewed.

(d) Each practice unit or licensee, if the person is not a member of a practice unit, shall submit a ~~[an annual]~~ quality review fee not to exceed \$200 for each quality review required by the board ~~[\$100]~~, as provided by board rule.

SECTION 19. Section 17, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

(g) A rule or statutory requirement that applies to a partnership also applies to a partner in the partnership.

(h) Each office of a partnership in this state must register and hold a license issued under Section 9 of this Act.

SECTION 20. Section 19, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

(g) A rule or statutory requirement that applies to a partnership also applies to a partner in the partnership.

(h) Each office of a partnership in this state must register and hold a license issued under Section 9 of this Act.

SECTION 21. Section 20A(c), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) This section does not apply to ~~[prohibit]~~ the donation of services to a charitable organization as defined by board rule.

SECTION 22. Section 21, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), and (f) and adding Subsection (h) to read as follows:

(b) After notice and hearing as provided in Section 22 of this Act, the board, for any cause listed in Subsection (c) of this section, may:

(1) revoke any certificate or registration issued under this Act or prior Acts;

(2) suspend, under any terms, conditions, or limitations, for a period not to exceed five years, any certificate, registration, or license issued under this Act or prior Acts;

(3) reprimand, censure, or place on probation a licensee;

(4) limit the scope of practice of a licensee;

(5) refuse to renew a license; ~~[or]~~

(6) impose on the licensee the direct administrative costs related to actions taken under Subdivisions (1) through (5) of this section; or

(7) assess an administrative penalty as provided by Section 21D of this Act.

(c) The following constitute sufficient cause for action under Subsection (b) or (f) of this section:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining registration under this or any prior Acts or in obtaining a license to practice public accountancy under this Act;

(2) dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Section 8 or 20A of this Act applicable to a person certified or registered by the board;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by law;

(5) final conviction of a felony or imposition of deferred adjudication in connection with a criminal prosecution of a felony under the laws of any state or of the United States;

(6) final conviction of any crime or imposition of deferred adjudication in connection with a criminal prosecution, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate [an annual] registration fee in such other states;

(8) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) failure of a certificate holder or registrant to obtain a [an annual] license under Section 9 of this Act within either:

(A) three years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant, unless such failure shall be excused by the board pursuant to the provisions of Section 9 of this Act; or

(B) three years from the date upon which the certificate holder or registrant was granted his certificate or registration, if no license was ever issued to him, unless such failure shall be excused by the board pursuant to the provisions of Section 9 of this Act; or

(11) ~~(10)~~ conduct indicating lack of fitness to serve the public as a professional accountant.

(f) After notice and hearing as provided in Section 22 of this Act, the board, for any cause listed in Subsection (g) of this section, may:

(1) revoke any registration issued under this Act or prior Acts to a sole proprietorship, partnership, or corporation;

(2) suspend, under any terms, conditions, or limitations, for a period not to exceed five years, any registration or license issued under this Act or prior Acts to such entities;

(3) reprimand, censure, or place on probation a licensee;

(4) limit the scope of practice of a licensee;

(5) refuse to renew a license; ~~or~~

(6) impose on the licensee the direct administrative costs related to actions taken under Subdivisions (1) through (5) of this subsection; or

(7) assess an administrative penalty as provided by Section 21D of this Act.

(h) If an individual is placed on probation, the board may require the individual to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the individual's practice to the areas prescribed by the board;
or

(3) continue or renew professional education until the practitioner attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

SECTION 23. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 21D to read as follows:

Sec. 21D. ADMINISTRATIVE PENALTY. (a) If the board determines that a person required to be registered under this Act or regulated under this Act has violated a provision of this Act or a rule or order adopted by the board under this Act in a manner that constitutes a ground for a disciplinary action under this Act, the board may assess an administrative penalty against that person as provided by this section.

(b) The board may assess the administrative penalty in an amount not to exceed \$1,000 for each violation. In determining the amount of the penalty, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard to the public;

(2) the economic damage to property caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) If, after examination of a possible violation and the facts relating to that possible violation, the board determines that a violation has occurred, the board shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, and the amount to be assessed. Not later than the 10th day after the date on which the board issues the preliminary report, the board shall send a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty.

(d) Not later than the 20th day after the date on which the report is received by certified mail, the person charged either may make a written request for a hearing or may remit the amount of the administrative penalty to the board. Failure either to request a hearing or to remit the amount of the administrative penalty within the time provided by this subsection results in a waiver of a right to a hearing under this Act. If the person charged requests a hearing, the hearing shall be conducted in the manner provided for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). If it is determined after hearing that the person has committed the alleged violation, the board shall give written notice to the person of the findings established by the hearing and the amount of the penalty, and shall enter an order requiring the person to pay the penalty. If a hearing is not conducted, but the board determines that a violation has occurred and that an administrative penalty is to be imposed, the board shall give written notice to the person of its findings and shall enter an order requiring the person to pay the penalty.

(e) Within the 30-day period immediately following the date that the order becomes final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty must:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the board for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(f) If the person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (e)(2) of this section by filing with the board an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(g) Failure to forward the money, post the bond, or file the affidavit with the board within the time provided by Subsection (e) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided by Subsection (e)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (e)(2) or (f) of this section, the board may forward the matter to the attorney general for enforcement.

(h) Judicial review of the order or decision of the board assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) If the penalty is reduced or not assessed by the court, the board shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on an amount remitted by the board under this subsection shall be paid at a rate equal to the rate charged on a loan to a depository institution by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the board.

(j) The board shall deposit, as provided by Section 22A of this Act, the amounts received by the board under this section.

SECTION 24. Section 22(b), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The board may initiate disciplinary proceedings under this Act either on its own motion or on the complaint of any person. If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the board or a hearings officer appointed by the board. The board shall adopt procedures by which a decision to suspend or revoke a license is made by or is appealable to the board.

(1) A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than 20 days prior to the date of said hearing either personally or by mailing a copy thereof by registered or certified mail to the last known address of the accused.

(2) At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. The accused shall be entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

(3) The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearings under this Act. In cases of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(4) If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at said hearing, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, and a copy of such order shall be mailed by registered or certified mail to the last known address of the accused. The board is hereby authorized to grant continuances upon written request and upon a showing of good cause for failure to appear at such hearing, set out in writing, signed by the accused, and filed with the board. The board may reopen said proceedings and permit the accused to submit evidence in his behalf; provided further that said written request to reopen is filed with the board within 20 days after the date a copy of said order has been mailed to the accused.

SECTION 25. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 22A to read as follows:

Sec. 22A. ENFORCEMENT COMMITTEES; ENFORCEMENT FUND.

(a) The board may appoint enforcement committees from its membership and may adopt rules consistent with this Act as necessary for the performance of each committee's duties. An enforcement committee shall consider and make recommendations to the full board on matters relating to the enforcement of this Act and the rules adopted in accordance with this Act. At least one member of the board who is a public representative member must serve on each enforcement committee.

(b) A special fund is established for the exclusive use of the board to be known as the public accountancy enforcement fund. The fund may be used only to finance the enforcement functions performed under this Act. Money received by the board from a fee increase adopted under Section 9(g) of this Act and money related to an administrative penalty and received by the board under Section 21D of this Act shall be deposited in the fund. The state treasurer is the custodian of the fund. The comptroller shall issue warrants from the fund supported only by vouchers signed by the chairman and the executive director. The fund shall be appropriated to the board by the legislature.

SECTION 26. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 22B to read as follows:

Sec. 22B. COMPLAINT TRACKING REPORT; INFORMATION FILE.

(a) The board shall develop and maintain a system for tracking a complaint filed with the board against a person registered under this Act. At the time of its annual fiscal report under Section 7(b) of this Act, the board also shall report a statistical analysis of its disciplinary actions of the preceding year. At a minimum, the complaint tracking report must contain a statistical analysis of the following information:

- (1) the number of complaints received;
- (2) the number of complaints resolved;
- (3) the manner in which the complaints were resolved;
- (4) a categorization of complaints received and the number of complaints within each category; and
- (5) the average length of time required to resolve each category of complaints.

(b) If no complaints were received in a category during a reporting period, the board shall report that fact.

(c) The board shall maintain an information file about each complaint filed with the board for a period not to exceed 10 years after the date of the final disposition of the complaint. If a written complaint is filed with the board relating to a person registered under this Act, the board shall notify the parties to the complaint of each change in the status of the complaint, including the final disposition, unless the notice would jeopardize an undercover investigation.

SECTION 27. Section 23(b), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any person who violates any provision of The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), or of this Act shall be deemed guilty of a Class B misdemeanor and each violation shall constitute a separate offense. Any complaints filed under the provisions of this section shall be filed in a district court of Travis County, Texas, in the case of a complaint filed against a license holder under this Act or, in the case of a complaint filed against a person who is not licensed or registered under this Act, in the county where the person resides [offense occurred].

SECTION 28. Section 25, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. CONFIDENTIALITY OF CERTAIN BOARD FILES. Any file maintained or information gathered or received by the board from a third party concerning a candidate, licensee, or former licensee shall be available for inspection by that candidate, licensee, or former licensee during normal business hours at the offices of the board in Austin. A candidate, licensee, or former licensee by written communication may authorize the board to make any information gathered or received by the board from a third party about that candidate, licensee, or former licensee available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee or an applicant to take the uniform CPA examination under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under Chapter 424, Acts of the 63rd Legislature, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). However, a final order issued by the board relating to a disciplinary action against a licensee, including a reprimand, censure, or admonishment, that results from an informal proceeding or a formal public hearing by the board, is subject to disclosure to the public and is available on request.

SECTION 29. Section 28, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 28. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy is subject to Chapter 325, Government Code [(the) Texas Sunset Act [(Chapter 325, Government Code)]]. Unless continued in existence as provided by that chapter [Act], the board is abolished and this Act expires September 1, 2003 [1991].

SECTION 30. Section 29, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. TRANSITION. (a) The Texas State Board of Public Accountancy to which this Act refers is a continuation of the Texas State Board of Public Accountancy created by The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes).

(b) The short title of this Act is changed to the Public Accountancy Act of 1991. A reference in a law to the Public Accountancy Act of 1979 means the Public Accountancy Act of 1991. [A person holding office as a member of the Texas State Board of Public Accountancy on the effective date of this Act shall continue to hold office for the term for which the member was originally appointed.]

[(c) The terms of office of all succeeding members of the board expire on January 31 of odd-numbered years, six years after expiration of the previous term of office. The initial appointment under this Act shall be for such staggered terms as are necessary to provide for the expiration of the terms of one-third of the board members every two years.]

[(d) After the effective date of this Act the governor shall appoint members to the board in a manner that achieves as soon as possible the membership plan provided in this Act.]

SECTION 31. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 32 to read as follows:

Sec. 32. SCHOLARSHIP FUND FOR FIFTH-YEAR ACCOUNTING STUDENTS. (a) The legislature finds that a public purpose of the state is served by the scholarships awarded under Subchapter N, Chapter 61, Education Code, and financed under this section by:

- (1) promoting the professional and educational needs of the state;
- (2) increasing the number of highly trained and educated professional accountants available to serve the residents of this state;
- (3) improving the state's business environment and encouraging economic development and financial stability; and
- (4) identifying, recognizing, and supporting outstanding scholars from throughout the state who plan to pursue careers in accounting.

(b) Each license fee collected under Section 9 of this Act that is due on or after September 1, 1991, is increased by \$20.

(c) Each fee collected under this section shall be deposited in the state treasury to the credit of a special fund to be known as the scholarship fund for fifth-year accounting students. The fund may be used only by the Texas Higher Education Coordinating Board for providing scholarships to accounting students in the fifth year of a program that would qualify the recipient to apply to become a certified public accountant, as provided by Subchapter N, Chapter 61, Education Code, and by the Texas Higher Education Coordinating Board and the Texas State Board of Public Accountancy for paying associated administrative costs, subject to Subsection (e) of this section.

(d) Notwithstanding Section 404.071, Government Code, interest earned on amounts in the scholarship fund for fifth-year accounting students shall be credited to that fund.

(e) The administrative costs incurred to collect the fee increase provided under Subsection (b) of this section and to disburse the funds may not exceed 15 percent of the total money collected, with 10 percent to be allocated to the Texas Higher Education Coordinating Board and five percent to the Texas State Board of Public Accountancy.

SECTION 32. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.080 to read as follows:

Sec. 61.080. REPORT ON IMPLEMENTATION OF 150-HOUR ACCOUNTING PROGRAMS. (a) Between January 1, 1993, and January 31, 1993, the board shall report to the legislature about the progress being made by institutions of higher education in this state toward implementation of the requirement imposed under Section 12(e), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), that after August 31, 1997, accounting students seeking certification as "certified public accountants" must have, in addition to other requirements, 150 semester hours or quarter-hour equivalents in an approved baccalaureate program.

(b) The report expenses shall be included in the administrative costs allocated to the board under Section 32(e) of this Code. The report must include:

- (1) the estimated cost of implementing the 150-hours requirement;
- (2) the estimated number of students to be affected by the change in requirements;
- (3) the number of minority students who are affected by implementation of the 150-hours requirement to the extent that the board has knowledge of these statistics;

(4) the number of students enrolled in accounting programs in Texas;
(5) the number of examinees who sit for the certified public accountant examination;
(6) the number of examinees who pass and fail the examination by ethnic background;
(7) the ethnic background of all individuals licensed under this Act to the extent that the board has knowledge of these statistics; and
(8) any other information the board believes will assist the legislature in implementing and evaluating this program.

(c) This section expires February 1, 1997.

SECTION 33. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.081 to read as follows:

Sec. 61.081. REPORT ON ACCOUNTANT SCHOLARSHIP PROGRAM.

(a) Before January 15 of each odd-numbered year, the board shall report to the legislature concerning the scholarship program for fifth-year accounting students administered by the board under Subchapter N, Chapter 61, of this code.

(b) The report expenses shall be included in the administrative costs allocated to the board under Section 32(e) of this Code. The report must include:

(1) the number and amount of scholarships awarded in the two calendar years preceding the year in which the report is due; and

(2) the number of minority students, by racial or ethnic background, who have been awarded scholarships under the program in that two-year period.

SECTION 34. Chapter 61, Education Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. SCHOLARSHIPS FOR FIFTH-YEAR ACCOUNTING STUDENTS

Sec. 61.751. DEFINITION. In this subchapter, "fifth-year accounting student" means a student enrolled in the additional hours of study required by Section 12(e)(2)(B), Public Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil Statutes).

Sec. 61.752. PUBLIC PURPOSE. The scholarships required by this subchapter serve a public purpose of the state as described by Section 32, Public Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil Statutes).

Sec. 61.753. SCHOLARSHIPS. The board shall establish and administer, using funds appropriated for that purpose and in accordance with this subchapter and board rules, scholarships for fifth-year accounting students.

Sec. 61.754. FACTORS. (a) Scholarships shall be established and administered in a manner that the board determines best serves the public purpose of the scholarships.

(b) In determining what best promotes the public purpose, the board shall consider at a minimum the following factors relating to each person applying for a scholarship under this section:

(1) financial need;

(2) ethnic or racial minority status; and

(3) scholastic ability and performance.

Sec. 61.755. RULES. (a) The board shall adopt rules as necessary for the administration of this subchapter.

(b) The board shall adopt rules relating to the establishment of the scholarships under Section 61.753 of this code, including rules providing eligibility criteria and the determination of the amount of each scholarship.

Sec. 61.756. SCHOLARSHIP REGULATIONS. (a) The maximum amount of any scholarship awarded under this subchapter is \$3,000. The scholarship may be spent by the recipient on the expenses for tuition, fees, books, supplies, and living expenses incurred by the student in connection with the student's fifth year of an

accounting program. Scholarships shall be made available to eligible students attending any institution of higher education as defined by Section 61.003 of this code, or any nonprofit independent institution approved by the board under Section 61.222 of this code.

(b) The board may award a scholarship under this subchapter only to an eligible student who intends to take the written examination conducted by the Texas State Board of Public Accountancy for the purpose of granting a certificate of "certified public accountant." An applicant for a scholarship under this subchapter shall state such an intent by filing a form provided by the board stating an intent to take the examination.

(c) A scholarship under this subchapter shall be paid to the recipient in the form of periodic partial payments throughout the school year. The board by rule shall determine the manner in which these payments are made.

Sec. 61.757. ADVISORY COMMITTEE. (a) The board shall appoint an eight-member advisory committee to advise the board concerning scholarships provided under this subchapter. The advisory committee consists of:

- (1) a presiding officer named by the board;
- (2) one representative named by the Texas State Board of Public Accountancy;
- (3) one representative named by the Texas Society of Certified Public Accountants;
- (4) a Texas representative of the American Accounting Association named by that organization;
- (5) one representative named by the National Association of Black Accountants;
- (6) one representative named by the American Association of Hispanic Certified Public Accountants; and
- (7) two representatives named by the board who are the chairmen of accounting departments at Texas colleges and universities, at least one of whom must be a representative of a private college or university and at least one other of whom must be a representative from a college or university that primarily serves minority students.

(b) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member of the organization or agency the member represents.

(c) In addition to any other duties assigned by the board, the advisory committee specifically shall advise the board on:

- (1) how the scholarships provided for under this subchapter should be established and administered to best promote the public purpose of the scholarships;
 - (2) the amount of money needed to adequately fund the scholarships;
- and
- (3) any priorities among the factors identified by Section 61.754 of this code.

Sec. 61.758. FUNDING. The board may:

(1) use, in accordance with this subchapter and Section 32, Public Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil Statutes), any money appropriated to it from the fund established by that section; and

(2) accept gifts, grants, and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this subchapter.

Sec. 61.759. INITIAL SCHOLARSHIPS. (a) The board may not award a scholarship under this subchapter before January 1, 1996.

(b) This section expires January 2, 1996.

Sec. 61.760. MINORITY AND DISADVANTAGED STUDENT INTERNSHIPS. (a) The board shall adopt rules to encourage internships for

minority and disadvantaged students and certified public accountant examination candidates who notify the board not later than 90 days after the date of being accepted into an accounting internship program.

(b) The rules adopted by the board shall include standards for appropriate recognition of an accounting firm for its efforts in training and hiring minority or disadvantaged students.

SECTION 35. Section 8, Chapter 787, Acts of the 71st Legislature, Regular Session, 1989 (Article 6252-5d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. INTERNAL AUDIT STANDARDS. The internal audit program shall conform to the Standards for the Professional Practice of Internal Auditing, generally accepted governmental auditing standards, the Certified Internal Auditor Code of Professional Ethics, and the Statement of Responsibilities of Internal Auditing, as promulgated and periodically revised by the Institute of Internal Auditors.

SECTION 36. Sections 30 and 31, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), are repealed.

SECTION 37. (a) A person that holds a certificate issued under the provisions of the Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) on the effective date of this Act is not required to obtain a new certificate as a certified public accountant under this Act until the date of the expiration of the certificate.

(b) An individual who is eligible to sit for the uniform certified public accountant examination on the effective date of this Act shall continue to be qualified to sit for the examination, and the educational requirements for the certification of the individual shall be the requirements in effect on the date that the individual made an initial application for an examination in this state.

(c) An individual who met the work experience requirements for certification as a certified public accountant before the effective date of this Act is not required to comply with the requirements of Section 12(h), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), as amended by this Act.

(d) The changes in law made by this Act in the qualifications of members of the Texas State Board of Public Accountancy do not affect the entitlement of a member appointed before September 1, 1991, to continue to hold office on the board for the term for which the member was appointed. As the terms of board members expire or as vacancies are created on the board, the governor shall appoint members to the board to achieve, as soon as possible, the membership scheme prescribed by Section 4(a), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), as amended by this Act. The changes in law made by this Act in the qualifications of persons appointed to the Texas State Board of Public Accountancy apply only to a member appointed on or after September 1, 1991.

(e) The first policy statement required to be filed under Section 5A(d), Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 38. This Act takes effect September 1, 1991.

SECTION 39. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to S.B. 75 by a viva voce vote.

SENATE BILL 219 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 219** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Jones

Amend **S.B. 219** by striking the language in SECTION 3 in its entirety and substituting the following in lieu thereof:

SECTION 3. DISPOSITION OF PROCEEDS. "The proceeds from a conveyance under this Act shall be deposited in the unemployment compensation Special administration fund to be used for the acquisition of other real property, for the construction or improvement of facilities of the Texas Employment Commission, or otherwise as the United States Department of Labor may direct."

The amendment was read.

Senator Lucio moved to concur in the House amendment to **S.B. 219**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 293 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 293** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Stiles

Amend **S.B. 293** on page 1, line 11 by adding the following between the word "1" and the word "shall".

"or as soon thereafter as practicable".

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendment to **S.B. 293** by a viva voce vote.

(Senator Lyon in Chair)

SENATE BILL 33 WITH HOUSE AMENDMENT

Senator Green called **S.B. 33** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Madla

Amend **S.B. 33** as follows:

In Section 16(b), page 11, line 5, strike "Harris County Psychiatric Center" and substitute "Commission".

The amendment was read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendment to **S.B. 33** by a viva voce vote.

SENATE BILL 140 WITH HOUSE AMENDMENT

Senator Green called S.B. 140 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Carter

Amend S.B. 140 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to an exemption from regulation of certain driver-training courses and driver-training instructors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413 (29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. **CERTIFICATE REQUIRED FOR COMMERCIAL DRIVER-TRAINING SCHOOL; EXEMPTIONS.** No person, firm, association, partnership, or corporation shall operate a commercial driver-training school unless a certificate of approval for the commercial driver-training school has been secured under the Texas Proprietary School Act (Chapter 32, Education Code). This section does not apply to ~~provided that~~ training or classes conducted by:

(1) colleges, universities, high schools, and junior high schools for students as a part of the normal program for such institutions; or

(2) an organization with 50,000 or more members that qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501), based on being listed under Section 501(c)(4), Internal Revenue Code of 1986 (26 U.S.C. Section 501), and conducts a driving safety course for its members and other individuals who are at least 50 years of age that is not utilized for the dismissal of certain misdemeanor charges as provided by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) [shall be exempt].

SECTION 2. Section 5, Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. **LICENSE REQUIRED FOR SUPERVISORY DRIVER-TRAINING INSTRUCTOR AND DRIVER-TRAINING INSTRUCTOR.** No person shall teach or give driver-training for hire or for tuition, either as an individual or in a commercial driver-training school, or any phase of driver-training or education ~~[after January 1, 1968]~~, unless a license as a driver-training instructor or supervisory driver-training instructor has been secured from the Department, provided that instructors in classes conducted by an entity exempt under Section 2 of this Act ~~[colleges, universities, high schools, and junior high schools for regularly enrolled students as a part of the normal program for such institutions]~~ shall be exempt.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Green moved to concur in the House amendment to S.B. 140.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 747 WITH HOUSE AMENDMENT

Senator Lucio called S.B. 747 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment on Third Reading - Wentworth

Amend S.B. 747 on third reading as follows:

(1) Between SECTION 1 and SECTION 2 (page 1, between lines 18 and 19), insert the following:

SECTION 2. Effective June 1, 1993, Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.0241 to read as follows:

Sec. 82.0241. UNACCREDITED SCHOOLS OF LAW. All matters relating to licensing of persons who were enrolled at unaccredited schools of law in this state are within the exclusive jurisdiction of the Supreme Court of the State of Texas.

(2) Renumber subsequent sections appropriately.

The amendment was read.

Senator Lucio moved to concur in the House amendment to S.B. 747.

The motion prevailed by the following vote: Yeas 31, Nays 0.

(President in Chair)

SENATE BILL 610 WITH HOUSE AMENDMENT

Senator Johnson called S.B. 610 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Linebarger

Amend S.B. 610 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the state Work and Family Policies Clearinghouse and Work and Family Policies Advisory Committee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 5221g-1, Revised Statutes, is amended to read as follows:

Art. 5221g-1. EMPLOYEE FAMILY-RELATED ~~[CHILD DAY CARE]~~ BENEFITS

Sec. 1. DEFINITIONS. In this Act:

(1) "Commission" means the Texas Employment Commission.

(2) "Committee" means the Work and Family Policies ~~[Texas Employment Commission's Child Day Care]~~ Advisory Committee.

(3) "Clearinghouse" means the Work and Family Policies Clearinghouse ~~[Texas Employment Commission's state child care resource clearinghouse]~~.

Sec. 2. ~~[CHILD DAY CARE AS AN EMPLOYEE BENEFIT. The Texas Employment Commission is authorized to develop expertise and provide technical assistance to state agencies and to private and public employers regarding options~~

for offering child day care as an employee benefit. Areas of technical assistance may include: federal tax incentives for employers and employees; cafeteria benefit plans that include day care; on-site, contract, and voucher system options for providing day care; and any other areas designated by the commission.

[Sec. 3.] WORK AND FAMILY POLICIES [CHILD DAY CARE] ADVISORY COMMITTEE. (a) The Work and Family Policies [commission is authorized to establish a Child Day Care] Advisory Committee shall advise [for the purpose of advising] the commission on dependent [child day] care and other employment-related family initiatives for public and private employers and employees, on options for including dependent [day] care as a state employee benefit, and on any other employment-related family [day-care] issues [as determined by the commission].

(b) The committee may consist of up to 12 members and shall consist of corporate, consumer, and provider representatives from both the public and private sectors. Members will be appointed by the administrator of the commission.

(c) A member of the committee serves without compensation but is entitled to reimbursement for necessary and reasonable expenses incurred while traveling on official committee business in an amount not to exceed the amount authorized by the General Appropriations Act for a state employee. Service [The commission is authorized to pay travel and per diem expenses necessarily incurred by committee members in performance of their duties under this Act. These expenses shall be paid in accordance with regulations of the commission from the Unemployment Compensation Special Administration Fund No. 165 or from any other special grants which may be received for this purpose. The committee members shall otherwise serve without pay, and service] on the committee shall not constitute state employment for any purpose.

Sec. 3[4]. WORK AND FAMILY POLICIES [STATE CHILD CARE RESOURCE] CLEARINGHOUSE. (a) The Work and Family Policies Clearinghouse is established within the commission and shall [commission is authorized to serve as the state child care resource clearinghouse and to] provide technical assistance and information regarding dependent care and other employment-related family issues to public and private employers, state agencies, policy makers, [child day care to local businesses] and individuals [through the commission's local offices].

(b) Materials regarding employment-related family issues that are [Child care materials] published by state agencies may be deposited with the clearinghouse [commission] for distribution to employers, to job applicants, and to other interested persons [through the commission's local offices].

(c) The clearinghouse shall administer the work and family policies fund as prescribed by Section 4 of this article.

(d) The clearinghouse shall conduct and compile research on child care and other employment-related family issues in the state. In fulfilling its obligations under this subsection, the clearinghouse:

- (1) may contract with other public or private entities;
- (2) shall select specific research topics after consulting with the committee and considering its recommendations; and
- (3) shall annually submit a report based on its research under this subsection to the governor, lieutenant governor, and speaker of the house of representatives.

(e) The commission by rule may adopt procedures to facilitate the implementation of programs under this section. In adopting rules under this section, the commission shall consider the recommendations of the clearinghouse staff.

Sec. 4. WORK AND FAMILY POLICIES FUND. The work and family policies fund is created in the state treasury. Money in the fund is derived from fees deposited as required by Section 191.0045, Health and Safety Code. Money in the fund may be used only for:

- (1) the operation of the clearinghouse;
- (2) research conducted under Section 3 of this article; and
- (3) other uses specifically authorized by law.

Sec. 5. GIFTS AND GRANTS. The clearinghouse may accept gifts and grants from public and private entities to fund any activity under this article.

SECTION 2. Section 191.0045, Health and Safety Code, as added by S.B. 404, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subsections (e) and (f) to read as follows:

(e) In addition to fees collected by the bureau of vital statistics under Subsection (b), the bureau shall collect an additional \$2 fee for each of the following:

- (1) issuing a certified copy of a certificate of birth;
- (2) issuing a wallet-sized certification of birth; and
- (3) conducting a search for a certificate of birth.

(f) The fees collected under Subsection (e) shall be deposited in the state treasury to the credit of the work and family policies fund. Money in the fund may be used only for the purposes prescribed by Section 4, Article 522lg-1, Revised Statutes.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendment to S.B. 610 by a viva voce vote.

SENATE BILL 770 WITH HOUSE AMENDMENTS

Senator Green called S.B. 770 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - S. Thompson

Amend S.B. 770 as follows:

(1) On page 1, lines 20 and 21, by striking "The fee must be paid at the time of the filing of the document" and insert "The fee shall be paid, into a "Records Management and Preservation Fund" established in the county treasury, at the time of the filing of all real property records, including tax lien releases, or any other records designated by the county clerk."

(2) On page 1, line 21, after "only" insert "by the county clerk":

(3) On page 1, line 21, strike "fee" and insert "fund".

Amendment on Third Reading - Chisum

Amend S.B. 770 on third reading as follows:

(1) On page 1, lines 20 and 21, by inserting "The fee must be paid at the time of the filing of the document" and striking "The fee shall be paid, into a "Records Management and Preservation Fund" established in the county treasury, at the time of the filing of all real property records, including tax lien releases, or any other records designated by the county clerk."

- (2) On page 1, line 21, after "only" strike "by the county clerk":
(3) On page 1, line 21, insert "fee" and strike "fund"

The amendments were read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendments to S.B. 770 by a viva voce vote.

SENATE BILL 978 WITH HOUSE AMENDMENT

Senator Sims called S.B. 978 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Junell

Amend S.B. 978 as follows:

- (1) Insert a new SECTION 3 of the bill to read as follows:

SECTION 3. The changes in law made by this Act do not create liability on the part of the state for the payment of the principal of or interest on bonds issued by a community center under Section 3.11, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as amended by this Act.

- (2) Renumber existing SECTIONS 3 and 4 of the bill appropriately.

The amendment was read.

On motion of Senator Sims and by unanimous consent, the Senate concurred in the House amendment to S.B. 978 by a viva voce vote.

SENATE BILL 981 WITH HOUSE AMENDMENT

Senator Sims called S.B. 981 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - R. Lewis

Amend S.B. 981 as follows:

- (1) Strike the sentence that begins on page 8, line 25.

(2) Strike Section 4 of the bill and renumber the subsequent sections appropriately.

The amendment was read.

Senator Sims moved to concur in the House amendment to S.B. 981.

The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

Yeas: Armbrister, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Barrientos, Green.

Present-not voting: Glasgow.

SENATE BILL 828 WITH HOUSE AMENDMENT

Senator Lyon called S.B. 828 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Russell

Amend S.B. 828 as follows:

Strike Section 5 and insert the following new Section 5: "This Action takes effect September 1, 1993."

In Section 4 of the bill, strike the words "January 1, 1992" and insert "January 1, 1994".

In Section 3 of the bill, subsection (i)(1), strike "1992" and insert "1994".

In Section 3 of the bill, subsection (i)(2), strike "1993" and insert "1995".

In Section 3 of the bill, subsection (i)(3), strike "1994" and insert "1996".

In Section 3 of the bill, subsection (i)(4), strike "1995" and insert "1997".

The amendment was read.

On motion of Senator Lyon and by unanimous consent, the Senate concurred in the House amendment to S.B. 828 by a viva voce vote.

SENATE BILL 691 WITH HOUSE AMENDMENT

Senator Dickson called S.B. 691 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Russell

Amend S.B. 691 as follows:

1. In SECTION 1, on page 3, line 19, by inserting after the words "accidental insurance coverage" the phrase "in an amount fixed by the Commission".

2. In SECTION 1, on page 3, line 21, by inserting between the phrase "in this state" and the period the phrase "and approved by the Commission".

The amendment was read.

On motion of Senator Dickson and by unanimous consent, the Senate concurred in the House amendment to S.B. 691 by a viva voce vote.

SENATE BILL 1230 WITH HOUSE AMENDMENT

Senator Dickson called S.B. 1230 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Brimer

Amend S.B. 1230, in SECTION 2, in added Section 52.025(d), Family Code, by striking "two hours" and substituting "six hours".

The amendment was read.

On motion of Senator Dickson and by unanimous consent, the Senate concurred in the House amendment to S.B. 1230 by a viva voce vote.

SENATE BILL 311 WITH HOUSE AMENDMENT

Senator Whitmire called S.B. 311 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Park

Amend S.B. 311 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the validation of governmental acts and proceedings by municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 28, Revised Statutes, is amended by adding Article 974d-39 to read as follows:

Art. 974d-39

Sec. 1. APPLICATION. This article applies to any incorporated city, town, or village operating under general laws or under a home-rule charter.

Sec. 2. ADOPTION OF HOME-RULE CHARTER. (a) All governmental acts and proceedings of a municipality covered by this article regarding the adoption of a home-rule charter are validated as of the dates on which they occurred.

(b) All governmental acts and proceedings of the municipality since adoption or attempted adoption of the charter are validated as of the dates on which they occurred.

Sec. 3. INCORPORATION PROCEEDINGS. (a) The incorporation proceedings of all cities and towns in this state that incorporated or attempted to be incorporated under the general laws of the State of Texas, whether under the aldermanic or commission form of government, and which have functioned or attempted to function as incorporated cities or towns since the date of such incorporation or attempted incorporation are validated as of the date of such incorporation or attempted incorporation. The incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or incorporation proceedings may not have been in accordance with law.

(b) All governmental proceedings performed by the governing bodies of all such cities and towns and their officers since their incorporation or attempted incorporation are validated as of the date of such proceedings, including extensions or attempted extensions of extraterritorial jurisdiction undertaken at the request of owners of territory.

Sec. 4. ANNEXATION PROCEEDINGS. (a) The governmental acts and proceedings of a city or town relating to the annexation or attempted annexation of adjacent territory by the city or town before December 31, 1990, are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with the procedural or other requirements of Chapters 42 and 43, Local Government Code, or another law. The boundaries fixed by the annexation or attempted annexation are validated.

(b) The governmental acts and proceedings of the city or town occurring after the annexation may not be held invalid on the ground that the annexation, in the absence of this article, was invalid.

Sec. 5. ANNEXATIONS NOT VALIDATED. This article does not validate governmental acts or proceedings relating to a city's or town's annexation or attempted annexation of territory in the extraterritorial jurisdiction of another city or town without the consent of that city or town in violation of Chapters 42 and 43, Local Government Code.

Sec. 6. SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENT PROJECTS. In any case where an incorporated city or town has approved special assessments for improvements to public streets and roads located in such city or town, all governmental acts and proceedings and all transactions relating thereto are validated, notwithstanding the failure of any one or more of the governmental entities to comply with all legal requirements concerning the approval of such special assessments.

Sec. 7. This act does not validate any ordinance or regulation of a municipality that violates Section 1.06 or 109.57, Alcoholic Beverage Code.

Sec. 8. EFFECT OF LITIGATION. This article does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendment to S.B. 311 by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1367

Senator Krier submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 1367 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

KRIER
BROOKS
JOHNSON

MADLA
BARTON
VAN DE PUTTE
LINEBARGER

On the part of the Senate

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE ON SENATE BILL 429
DISCHARGED**

On motion of Senator Green and by unanimous consent, the Senate conferees on S.B. 429 were discharged.

Question—Shall the Senate concur in the House amendments to S.B. 429?

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendments to S.B. 429 by a viva voce vote.

SENATE BILL 545 WITH HOUSE AMENDMENT

Senator Henderson called S.B. 545 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Black

Amend S.B. 545 on page 18, line 17, by deleting subsection (d) and substituting the following:

(d) As a condition for renewal of registration to practice as a registered professional land surveyor, the board shall require the registrant to complete successfully continuing professional education courses, as prescribed by board rule. The rule shall provide that the continuing professional education requirement may be met by the completion of no more than eight hours, a calendar day, of professional development courses or programs in any annual period. The board may also grant professional development credit for satisfactory completion of academic work at an accredited institution, teaching or consultation in programs approved by the board, or authorship of technical papers approved by the board. The requirements of this subsection do not apply to registrants who are also registered as registered professional engineers until December 31, 1995.

The amendment was read.

On motion of Senator Henderson and by unanimous consent, the Senate concurred in the House amendment to S.B. 545 by a viva voce vote.

SENATE BILL 1004 WITH HOUSE AMENDMENT

Senator Montford called S.B. 1004 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Jones

Amend S.B. 1004 by adding new SECTION 30, following existing SECTION 29, and renumbering subsequent sections.

SECTION 30. Subsection (c), Section 321.014, Government Code, is amended to read as follows:

(c) The State Auditor shall submit each report to the committee prior to publication. The State Auditor shall file a copy of each report prepared under this section with:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the secretary of state;
- (5) the Legislative Reference Library;

(6) the chairman of the governing body and the administrative head of each entity that is the subject of the report; and

(7) members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report.

The amendment was read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendment to S.B. 1004 by a viva voce vote.

SENATE BILL 428 WITH HOUSE AMENDMENTS

Senator Lyon called S.B. 428 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Counts

Amend S.B. 428 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article 3, Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 3.075 to read as follows:

Sec. 3.075. APPLICATION TO CERTAIN PROFESSIONAL ATHLETES.

(a) A person employed as a professional athlete by a franchise of the National Football League, National Basketball Association, American League of Professional Baseball Clubs, or the National League of Professional Baseball Clubs under a contract for hire or a collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this Act may not receive benefits under this Act and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the athlete's employment must elect to receive either the benefits available under this Act or the benefits under the contract or agreement.

(b) The commission by rule shall establish the procedures and requirements for an election under this section.

SECTION 2. This Act takes effect September 1, 1991, and applies only to a compensable injury which occurs on or after September 1, 1991. An injury occurring before September 1, 1991, is governed by the law in effect on the date that the injury occurred, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Junell

Amend C.S.S.B. 428 as follows:

Amend SECTION 3.115, page 3, line 15, following the word "shall"—insert the word "not" between "shall" and "be".

On page 3, delete lines 16, 17, 18, and 19.

Add the following text on page 3, line 16: "payable during any period of time in which a player is receiving salary payments from the employer pursuant to his individual player contract or any applicable collective bargaining agreement."

On page 3, line 20, delete the word "provided."

On page 4, line 3, delete the word "wages" and insert the word "salary".

The amendments were read.

On motion of Senator Lyon and by unanimous consent, the Senate concurred in the House amendments to **S.B. 428** by a viva voce vote.

(Senator Parker in Chair)

SENATE BILL 334 WITH HOUSE AMENDMENT

Senator Whitmire called **S.B. 334** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Goodman

Amend **S.B. 334** by adding a new SECTION 2 to read as follows and renumbering existing SECTIONS 2 and 3 as SECTIONS 3 and 4:

SECTION 2. Subchapter B, Chapter 32, Family Code, is amended by adding Section 32.25 to read as follows:

Sec. 32.25. CHANGE OF NAME FOLLOWING ADULT ADOPTION. On entry of a decree of adoption under Subchapter B, Chapter 16, of this code, the court, in its discretion, may enter a decree changing the name of the adopted adult if the adopted adult specially prays for the change.

The amendment was read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendment to **S.B. 334** by a viva voce vote.

SENATE BILL 1097 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 1097** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Price

Amend **S.B. 1097** by adding on page 2 line 4 at the end of Section 1 the following:

"For review purposes the final decision of the administrative law judge or hearing examiner has the same effect as a final decision of the commission, unless a commissioner requests formal review of the decision."

The amendment was read.

Senator Lucio moved to concur in the House amendment to **S.B. 1097**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1092 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 1092** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Maxey

Amend S.B. 1092 as follows:

On page 2, line 4 after the word "only" add the following:

The applicant shall give notice of the proposed rate change by mail to all affected utility customers.

The amendment was read.

Senator Lucio moved to concur in the House amendment to S.B. 1092.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1095 WITH HOUSE AMENDMENTS

Senator Lucio called S.B. 1095 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Eckels

Amend S.B. 1095 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the enactment of new laws and the repeal or amendment of existing laws for the effective and efficient operation of the uniform statewide accounting system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 57.48, Education Code, is amended to read as follows:

Sec. 57.48. **WARRANTS NOT TO BE ISSUED TO DEFAULTING PARTIES.** (a) The corporation shall report to the comptroller of public accounts the name of any person who is in default on a loan guaranteed under this chapter.

(b) The comptroller of public accounts may not issue a warrant to any person who has been reported by the corporation to be in default on a loan guaranteed under this chapter.

(c) The comptroller may issue a warrant to the assignee of a person who is in default only if the assignment became effective before the person defaulted.

(d) When this section prohibits the comptroller from issuing a warrant to a person, the comptroller is also prohibited from using an electronic funds transfer system to pay the person.

(e) This section does not prohibit the comptroller from issuing a warrant to pay the compensation of a state officer or employee.

(f)(1) This subsection applies when a payment is made to a person other than through the comptroller's issuance of a warrant or the comptroller's use of an electronic funds transfer system.

(2) A state agency may not use funds inside or outside the state treasury to pay a person if the agency knows that the person is in default on a loan guaranteed under this chapter.

(3) This subsection does not prohibit a state agency from paying the assignee of a person who is in default on a loan guaranteed under this chapter if the assignment became effective before the person defaulted.

(4) This subsection does not prohibit a state agency from paying the compensation of a state officer or employee.

(5) The comptroller may not reimburse a state agency for a payment that is made in violation of this subsection.

(g) In this section:

(1) "Compensation" includes wages, salaries, longevity pay, hazardous duty pay, and emoluments that are provided in lieu of wages or salaries. The term does not include expense reimbursements.

(2) "State agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(3) "State officer or employee" means an officer or employee of a state agency.

SECTION 2. Section 321.012, Government Code, is amended to read as follows:

Sec. 321.012. EXPENDITURES AND SALARIES. (a) The committee directs and controls the expenditure of any money appropriated to the office of the State Auditor.

(b) Except as provided by Subsection (c), before payment may be made on a voucher issued for payment of the salaries and expenses of the office, the State Auditor must approve the voucher.

~~[(c) Before payment may be made on a voucher issued for payment of the salary or expenses of the State Auditor, the chairman of the committee must approve the voucher.]~~

~~[(c)]~~ (d) The salaries of the assistant auditors and stenographic and clerical personnel may not exceed the amounts paid by other departments for similar services.

~~[(d)]~~ (e) Salaries shall be paid monthly.

SECTION 3. Section 403.004, Government Code, is amended to read as follows:

Sec. 403.004. CHIEF OF CLAIMS DIVISION. The comptroller shall designate one person as chief of the claims division. The chief of the claims division shall prepare or have prepared all [pay] warrants and is accountable to the comptroller for warrants coming into the person's possession.

SECTION 4. Subsection (d), Section 403.016, Government Code, is amended to read as follows:

~~(d) [The state treasurer may not make payment of a state employee's salary before the first working day of the month following the payroll period.] When a law requires the comptroller to make a payment by warrant, the comptroller may instead make the payment through an electronic funds transfer system. The use of an electronic funds transfer system or any other payment means does not create a right that would not have been created if a [an individual] state warrant had been used.~~

SECTION 5. Section 403.017, Government Code, is amended to read as follows:

Sec. 403.017. CUSTODY OF SECURITY FOR MONEY AND DEEDS ~~[AND OBLIGATIONS TO STATE]~~. (a) ~~A bond, note, or other security for money given to the state or an officer for the use of the state shall be deposited in the office of the comptroller. [Except as provided by Subsection (b) or otherwise specifically provided, the following documents shall be deposited in the office of the comptroller:]~~

~~[(1) a deed to the state;]~~

~~[(2) a lien, mortgage, bond, note, or other security for money given to the state or an officer for the use of the state; and]~~

~~[(3) a contract or other document involving a pecuniary obligation to the state;]~~

(b) A deed conveying land or an interest in land to the state for highway purposes shall be deposited in the Austin office of the State Department of Highways and Public Transportation.

SECTION 6. Chapter 403, Government Code, is amended by adding Section 403.021 to read as follows:

Sec. 403.021. ENCUMBRANCE REPORTS. (a) A state agency that expends appropriated funds shall submit a binding encumbrance report to the comptroller, the state auditor, and the Legislative Budget Office by no later than October 30th of each year.

(b) The report must indicate the unencumbered balance, if any, of each non-construction appropriation for the preceding fiscal year. The report must be made in the format that the comptroller prescribes. The comptroller may reject a report if it does not contain sufficient information or comply with the comptroller's prescribed format.

(c) On October 31st of each year, the comptroller shall lapse all unencumbered balances based on information in the binding encumbrance reports.

(d) If an agency has not submitted a report by October 31st, the comptroller shall lapse the unexpended balance of the agency's appropriations. If the agency subsequently submits a report, the comptroller shall reinstate the agency's appropriations to the extent they were encumbered but unexpended.

(e) If a state agency submits a claim that is legally payable against an appropriation for an earlier year and the balance of the appropriation is insufficient to pay the claim, then the comptroller may reopen the appropriation to pay the claim. A claim is legally payable from an appropriation only if the appropriation was encumbered to pay the claim before the expiration of the appropriation.

(f)(1) In addition to submitting the binding encumbrance reports required by Subsections (a)-(e) of this section, a state agency that expends appropriated funds shall submit a non-binding encumbrance report each month to the comptroller through the uniform statewide accounting system. A report is due no later than the 45th day after the end of the month covered by the report.

(2) Upon receipt of a report, the comptroller shall provide the information in the report to the Legislative Budget Office and the state auditor.

(3) A state agency may use electronic media transfer of data to satisfy the requirements of this subsection.

(4) This subsection does not apply until the uniform statewide accounting system is fully implemented.

(g) The comptroller may adopt rules to administer this section.

SECTION 7. Section 403.055, Government Code, is amended to read as follows:

Sec. 403.055. ISSUANCE TO DEBTORS PROHIBITED. (a) The comptroller may not issue a [★] warrant [may not be issued] to a person[, or to the person's agent or assignee,] if the person is indebted or owes delinquent taxes to the state, or owes delinquent taxes under a tax that the comptroller administers or collects, until the debt or taxes are paid.

(b) The comptroller may issue a warrant to the assignee of a person who is indebted or owes delinquent taxes to the state only if the assignment became effective before the person became indebted to the state or delinquent in the payment of taxes to the state.

(c) This section does not prohibit the comptroller from issuing a warrant to pay the compensation of a state officer or employee.

(d) When this section prohibits the comptroller from issuing a warrant, the comptroller is also prohibited from using an electronic funds transfer system.

(e)(1) This subsection applies when a payment is made to a person other than through the comptroller's issuance of a warrant or the comptroller's use of an electronic funds transfer system.

(2) A state agency may not use funds inside or outside the state treasury to pay a person if the agency knows that the person is indebted or owes

delinquent taxes to the state, or owes delinquent taxes under a tax that the comptroller administers or collects, until the debt or taxes are paid.

(3) This subsection does not prohibit a state agency from paying the assignee of a person who is indebted or owes delinquent taxes to the state if the assignment became effective before the person became indebted to the state or delinquent in the payment of taxes to the state.

(4) This subsection does not prohibit a state agency from paying the compensation of a state officer or employee.

(5) The comptroller may not reimburse a state agency for a payment that is made in violation of this subsection.

(f) In this section:

(A) "Compensation" includes wages, salaries, longevity pay, hazardous duty pay, and emoluments that are provided in lieu of wages or salaries. The term does not include expense reimbursements.

(B) "State agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(C) "State officer or employee" means an officer or employee of a state agency.

SECTION 8. Subsection (b), Section 403.060, Government Code, is amended to read as follows:

(b) The comptroller:

(1) may print all warrants on a stock that is the same color and design;

(2) may make a warrant payable out of two or more state funds when not prohibited by law;

(3) shall number warrants in accordance with the requirements of the uniform statewide accounting system; and

(4) may combine on a single warrant the payments to a vendor or state employee by two or more state agencies when not prohibited by law.

SECTION 9. Section 403.071, Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) Notwithstanding Subsection (a) of this section, the comptroller and a state agency may contract in writing for the comptroller to audit claims presented by the state agency after the comptroller prepares warrants or uses the electronic funds transfer system to pay the claims. If the comptroller and a state agency execute a contract, the comptroller may decide the types of claims that will be audited after payment.

(h) This subsection applies if the comptroller and a state agency have contracted in accordance with Subsection (g) of this section. The comptroller shall audit claims after payment in the same way that the comptroller audits claims under Subsection (a) of this section. If a post-payment audit by the comptroller shows that a claim presented by a state agency was invalid, the comptroller may:

(1) implement procedures to ensure that similar invalid claims from the state agency are not paid in the future;

(2) report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the Legislative Budget Board the results of the audit;

(3) require the state agency to obtain a refund of the monies from the payee;

(4) cancel the contract with the state agency; and

(5) reduce the state agency's remaining appropriations by the amount of the claim.

SECTION 10. Section 403.074, Government Code, is amended to read as follows:

Sec. 403.074. MISCELLANEOUS CLAIMS. (a) The comptroller shall pay, from available funds appropriated for that purpose, miscellaneous claims for which an appropriation does not otherwise exist or for which the appropriation has lapsed~~[including state ad valorem tax refund claims qualifying under this section]~~. For the purpose of this section, "miscellaneous claims" does not include claims concerning warrants that have expired because they were not presented to the state treasurer for payment within the time period specified in Article 5221b-7(d), Vernon's Texas Civil Statutes.

(b) The comptroller may not pay ~~[A warrant may not be prepared for payment of]~~ a miscellaneous claim unless the claim has been:

(1) verified and substantiated by an authorized employee of the ~~[administrator]~~ state agency whose ~~[of the]~~ special fund or account ~~[against which the claim]~~ is to be charged for the claim; ~~[and]~~

(2) verified by the attorney general as a legally enforceable obligation of the state; and

(3) certified by the claimant as due and unpaid.

(c) The comptroller shall keep a record of each transaction made under this section, showing:

(1) the amount of the claim paid;

(2) the identity of the claimant;

(3) the purpose of the claim; and

(4) the fund or account against which the claim is to be charged.

(d) The comptroller may not pay under this section a ~~[A]~~ single claim in excess of \$25,000 ~~[\$10,000]~~, or an aggregate of claims by a single claimant during a biennium in excess of \$25,000 ~~[\$10,000, may not be paid under this section]~~. For the purposes of this subsection, all claims that were originally held by one person are considered held by a single claimant regardless of whether those claims were later transferred.

(e) Unless another law provides a period within which a particular claim must be made, a claim may not be made under this section after four years from the date on which the claim arose. A claim arises on the day after the last day that payment was due on the original claim. A person who fails to make a claim within the period provided by law waives any right to a payment of the claim.

(f) This section does not apply to a claim for a refund of a tax or fee.

SECTION 11. Subsections (c) and (d), Section 404.062, Government Code, are amended to read as follows:

(c) This subsection applies to money the status of which is undetermined or that is awaiting the time when it can be taken into the treasury. The money shall be placed with the treasurer and credited to the suspense account. The treasurer shall request and maintain information about the deposit of funds into the suspense account in accordance with Section 403.052. ~~[A deposit receipt shall be issued by the comptroller for the daily total of those remittances. The cashier of the treasury department shall keep a cash book, to be called the suspense cash book, in which are entered those deposit receipts and other receipts issued for cash received for which a deposit warrant may not be issued or for which issuance of a deposit warrant is delayed.]~~

(d) When the status of money placed in the suspense account ~~[with the treasurer on a deposit receipt]~~ is determined, the money shall be transferred from the suspense account by placing the portion of it belonging to the state in the treasury, ~~[by the issuance of a deposit warrant,]~~ and the part not belonging to the state shall be refunded. The refund shall be made either to the payor of the money or to the payor's estate, assignee, devisee, or other successor-in-interest.

SECTION 12. Section 404.066, Government Code, is amended to read as follows:

Sec. 404.066. LEDGER. (a) The general ledger kept by the treasurer shall contain accounts for each fund. Those accounts shall be credited with the existing balances and the daily totals of deposits [deposit warrants]. Warrants issued and electronic funds transfers shall be charged daily to the fund accounts [from the warrants issued registers in daily totals].

(b) The ledger shall contain control accounts for cash, depository banks, bonds, interest, securities, warrants payable, and other necessary accounts. Postings shall be made to the ledger daily [from the deposit warrant register, warrants issued registers, warrants paid register, and other supporting records].

(c) The ledger shall be balanced daily.

SECTION 13. Section 404.141, Government Code, is amended to read as follows:

Sec. 404.141. PURPOSE OF PETTY CASH ACCOUNTS. A petty cash account may be established for:

- (1) making change of currency;
- (2) advancing travel expense money to state officers and employees;
- (3) making small disbursements concerning which formal expenditure procedures are not cost-effective; or
- (4) any similar purpose or combination of purposes a state agency considers prudent for conducting state business.

SECTION 14. Subchapter I, Chapter 404, Government Code, is amended by adding Section 404.1411 to read as follows:

Sec. 404.1411. TRAVEL ADVANCES. (a) This section applies only to the petty cash accounts that are established for advancing travel expense money to state officers and employees.

(b) The comptroller shall adopt rules governing the use of petty cash accounts.

(c) The comptroller's rules must:

- (1) prohibit the use of a petty cash account to advance more than projected travel expenses to a state officer or employee;
 - (2) prohibit a state agency from using a petty cash account to advance travel expense money to a prospective state officer or employee;
 - (3) require a final accounting after a state officer or employee has incurred travel expenses; and
 - (4) prohibit a state agency from using a petty cash account for any purpose other than advancing travel expense money to a state officer or employee.
- (d) In this section, "final accounting" means a reimbursement from or additional payment to a state officer or employee so that the amount advanced from a petty cash account equals the actual travel expenses incurred by the officer or employee.

SECTION 15. Section 404.143, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A petty cash account established for a purpose or combination of purposes that a state agency considers prudent for conducting state business may not exceed the amount determined by the comptroller as necessary for the efficient operation of the agency.

SECTION 16. Section 404.147(h), Government Code, is amended to read as follows:

(h) A state agency may keep currency in its office for the purpose of making change, spot purchases, or any similar purpose or combination of purposes as determined by the agency. The amount of currency kept in the office may not exceed \$100 unless the comptroller determines that a higher amount is necessary for the efficient operation of the agency [at any time]. The agency may obtain this

currency by drawing checks on the petty cash account. The documentation that the agency would maintain if a disbursement were made from the petty cash account itself must be maintained for each disbursement from the currency kept in the office.

SECTION 17. Section 404.149, Government Code, is amended to read as follows:

Sec. 404.149. EXCEPTIONS ~~[EXCEPTION]~~. This subchapter does not apply to:

- (1) a state agency whose funds are located completely outside the state treasury;
- (2) the petty cash accounts maintained by the Department of Mental Health and Mental Retardation under Section 2.17(b)(3), Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes);
- (3) the petty cash accounts that are funded by funds outside the state treasury; or
- (4) the imprest funds maintained by law enforcement agencies for the purchase of evidence or other enforcement purposes.

SECTION 18. Section 431.013, Government Code, is amended to read as follows:

Sec. 431.013. EXPENDITURES. The comptroller may not issue a warrant on ~~or initiate an electronic funds transfer from the state treasury for an expenditure [money expended] under this chapter unless [an itemized account for] the expenditure is [filed in the comptroller's office. The account must:]~~

- ~~[(1) be sworn to by the person expending the money;]~~
- ~~[(2) show the time and purpose of the expenditure and for what and by whom the money is expended; and]~~
- ~~[(3) be] approved by the adjutant general and the governor or their designees before payment.~~

SECTION 19. Section 481.084, Government Code, is amended by repealing Subsection (h).

SECTION 20. Chapter 481, Government Code, is amended by adding Section 481.0841 to read as follows:

Sec. 481.0841. PAYMENTS NOT TO BE MADE TO DEFAULTING USERS. (a) The department shall report to the comptroller the name of any user who is in default on a loan guaranteed under this subchapter and with respect to which the department has been required to honor a guarantee. The comptroller may not issue a warrant or initiate an electronic funds transfer to the user while the user is in default.

(b) The comptroller may issue a warrant to the assignee of a user who is in default only if the assignment became effective before the user defaulted.

(c) This section does not prohibit the comptroller from issuing a warrant or initiating an electronic funds transfer to pay the compensation of a state officer or employee.

(d)(1) This subsection applies when a payment is made to a user other than through the comptroller's issuance of a warrant or the comptroller's use of an electronic funds transfer system.

(2) A state agency may not use funds inside or outside the state treasury to pay a user if the agency knows that the user is in default on a loan guaranteed under this subchapter and with respect to which the department has been required to honor a guarantee.

(3) This subsection does not prohibit a state agency from paying the assignee of a user who is in default if the assignment became effective before the user defaulted.

(4) This subsection does not prohibit a state agency from paying the compensation of a state officer or employee.

(5) The comptroller may not reimburse a state agency for a payment that is made in violation of this paragraph.

(e) In this section:

(A) "Compensation" includes wages, salaries, longevity pay, hazardous duty pay, and emoluments that are provided in lieu of wages or salaries. The term does not include expense reimbursements.

(B) "State agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(C) "State officer or employee" means an officer or employee of a state agency.

SECTION 21. Section 33.009, Human Resources Code, is repealed.

SECTION 22. Article 1.31, Insurance Code, is amended to read as follows:

Art. 1.31. REFUNDS. This article applies to any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance. When the State Board of Insurance determines that any person, firm, or corporation has through mistake of law or fact overpaid or paid erroneously any amount to the state on any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance, the State Board of Insurance may refund such payment by warrant on the state treasury from any funds appropriated for such purpose. ~~[This article shall not apply to any payment of tax made pursuant to Articles 4769, 7064, and 7064a of the Revised Civil Statutes of Texas, 1925].~~

SECTION 23. Section 12A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 12A. (a) It is the sense of the Legislature, as necessary to state policy, that facilities be immediately and continually available to meet any or all of the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers, and in order to make such provision and to provide that the Liquidator and employees be used for other Insurance Department duties when not involved in liquidation or conservation matters, the Legislature may make provisions for the Liquidator and employees and their expenses, in whole or in part, by making appropriations therefor, or by appropriating or permitting use of funds, other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved, which are received by or made available to the Board, or by establishing disappearing or partially or wholly reimbursable revolving funds in the Appropriation Acts, notwithstanding any other provision of Article 21.28 of Chapter 21 of the Insurance Code.

The provisions of this Act are cumulative of existing law and in the event of conflict the provisions of this Act shall govern.

(b) The Liquidator and the employees working for the Liquidator or in the liquidation division of the State Board of Insurance are employees of the State Board of Insurance for the purpose of:

(1) reporting payroll information to the uniform statewide accounting system; and

(2) submitting vouchers to the comptroller for the payment of the salaries of the Liquidator and the employees.

SECTION 24. Subsection (b), Section 51.068, Natural Resources Code, is amended to read as follows:

(b) The state treasurer shall deposit 80 percent of all these payments received each month to the probable fund to which they belong as indicated by the commissioner and shall hold the remaining 20 percent in the suspense account ~~[on deposit receipts furnished by the comptroller]~~ until definite notice is received from

the commissioner as to the proper fund. After definite notice is received, the State Treasurer shall credit the full amount to the proper fund.

SECTION 25. Section 11.039, Parks and Wildlife Code, is repealed.

SECTION 26. Subsection (a), Section 112.058, Tax Code, is amended to read as follows:

(a) Except as provided in Subsections (b) and (c) of this section, payments made under protest are to be handled as follows:

(1) An officer who receives payments made under protest as required by Section 112.051 of this code shall each day send to the treasurer the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

~~[(2) The comptroller shall issue a deposit receipt to each state department for the daily total of payments received from each department.]~~

~~[(3) The treasurer shall make and keep a suspense cash book in which deposit receipts are entered.]~~

~~(2)[(4)]~~ The treasurer shall, immediately on receipt, credit the payments to the suspense account in accordance with Section 404.062(c), Government Code and deposit [place] the payments in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest.

(3) ~~[(5)]~~ The treasurer shall allocate the interest earned on these funds and credit the amount allocated to the suspense account until the status of the funds is finally determined.

SECTION 27. Section 112.059, Tax Code, is amended to read as follows:

Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO THE STATE. [(a)] If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that a tax payment or a portion of a tax payment made under protest, including the pro rata amount of interest earned on the payment, belongs to the state, the treasurer shall transfer the proper amount from the suspense account to the appropriate state fund [by the issuance of a deposit warrant].

~~[(b) Each warrant issued under this section shall be entered in the suspense cash book and the appropriate fund to which the transfer is made shall be properly credited with the correct amount.]~~

SECTION 28. Section 3.15, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is amended by adding Subsection (h) to read as follows:

(h) This section does not apply to interagency purchases or transactions. Interagency purchases and transactions must be accomplished on special vouchers or electronically as prescribed by the comptroller of public accounts. The commission shall audit all interagency purchases and transactions after they have been completed.

SECTION 29. Section 3, Interagency Cooperation Act, (Article 4413(32), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) Any state agency may enter into and perform a written agreement or contract with other agencies of the state for providing [furnishing] necessary and authorized special or technical services, including the services of employees, [the services of] materials, or [the services of] equipment. The actual cost of providing [rendering] the services, materials, or equipment, or the nearest practicable estimate of the cost [that is practicable], shall be reimbursed[;] on the special vouchers or electronically as prescribed by the comptroller. Reimbursements are not required when services, materials, or equipment are provided [except in case of service rendered] in the fields of national defense or disaster relief, or in cooperative efforts, proposed by the governor [Governor], to promote the economic development of the state.

(b) This Act does not ~~[Provided, however, nothing herein shall]~~ authorize any state agency to construct a ~~[any]~~ highway, street, road, ~~[or other]~~ building, or structure for any other agency, except as otherwise specifically authorized by ~~[existing]~~ law.~~[:]~~ This Act does not affect the authority ~~[and, except as to the right]~~ of the Texas ~~[Highway]~~ Department of Highways and Public Transportation to enter into an interagency agreement ~~[agreements]~~ with a ~~[any]~~ state college or university or public junior college ~~[colleges providing]~~ for the maintenance, improvement, relocation, or extension of existing on-campus streets, parking lots, and access-ways.

(c) No state ~~[Provided, however, no]~~ agency may provide ~~[shall supply]~~ any services, ~~[supplies, or]~~ materials, or equipment to another agency if Article XVI, Section 21, of the Texas ~~[which are required by Section 21 of Article 16 of the]~~ Constitution ~~[of Texas]~~ requires them to be provided ~~[supplied]~~ under a contract awarded ~~[given]~~ to the lowest responsible bidder.

(d) A contract entered into by state agencies pursuant to this Act may authorize ~~[permit]~~ a performing agency to subcontract and purchase services, materials, and equipment to the extent deemed appropriate by the State Purchasing and General Services Commission.

(e) A receiving agency may advance funds to a performing agency when necessary for the performing agency to be able to provide services, materials, or equipment to the receiving agency. If an advance is made, the receiving agency and performing agency shall ensure after the services, materials, or equipment are provided that the performing agency has received only enough funds to reimburse it for its total costs. An advance of funds is a reimbursement for the purpose of Section 6 of this Act.

(f) A receiving agency may advance federal funds to a performing agency when the ~~[a]~~ receiving agency determines that the advance ~~[such advances]~~ would facilitate the implementation of a federally-funded program.

SECTION 30. Section 6, Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) A receiving agency shall reimburse a performing agency ~~[Payments for such services by a receiving agency shall be made]~~ from the appropriation items or accounts of the receiving agency from which like expenditures would normally be made.~~[:]~~ A reimbursement must be made on a voucher ~~[based upon vouchers]~~ drawn ~~[for this purpose]~~ by the receiving agency and payable to the ~~[furnishing]~~ performing agency or electronically as prescribed by the uniform statewide accounting system. A receiving agency may authorize a performing agency to access the receiving agency's current appropriation items or accounts for reimbursements under this Act.

(b) A reimbursement ~~[Payments]~~ received by a performing agency must ~~[the State agency performing the services shall]~~ be credited to the ~~[that State]~~ agency's current appropriation items or accounts from which the expenditures of that character were originally made.

(c) Payments for intraagency transactions shall be handled in the same manner as interagency transactions or by interdivisional transfer of funds on the records of the agency concerned, subject to the applicable provisions of the biennial appropriations act.

(d) The State Purchasing and General Services Commission shall audit a reimbursement under this Act for compliance with the contract after the reimbursement has been completed. If the commission determines that an unauthorized reimbursement has occurred, the commission shall notify the comptroller. Upon receipt of the notification, the comptroller shall return the reimbursement to the reimbursing agency's current appropriation items or

accounts. To the extent practicable, a reimbursement must be returned to the item or account from which the reimbursement was originally made.

SECTION 31. Title 72, Revised Statutes, is amended by adding Article 4591.2 to read as follows:

Art. 4591.2. HOLIDAYS FOR STATE EMPLOYEES

Sec. 1. In this article:

(1) "National holiday" means:

- (A) the first day of January;
- (B) the third Monday in February;
- (C) the last Monday in May;
- (D) the fourth day of July;
- (E) the first Monday in September;
- (F) the second Monday in October;
- (G) the 11th day of November;
- (H) the fourth Thursday in November; and
- (I) the 25th day of December.

(2) "Optional holiday" means Martin Luther King, Jr., Day, Rosh Hashanah, Yom Kippur, and Good Friday.

(3) "State agency" means a board, commission, council, department, committee, agency, office, or other unit of state government that was created by the constitution or a statute of this state and that is in the executive, legislative, or judicial branch of state government. The term does not include a local government, a river authority, a special district, a political subdivision, or an institution of higher education as defined by Section 61.003, Education Code.

(4) "State employee" means an appointed, non-constitutional officer or employee of a state agency. The term includes a part-time, hourly, or temporary state employee.

(5) "State holiday" means:

- (A) the 19th day of January;
- (B) the second day of March;
- (C) the 21st day of April;
- (D) the 19th day of June;
- (E) the 27th day of August;
- (F) every day on which an election is held throughout

the state;

- (G) the fourth Friday of November;
- (H) the 24th day of December; and
- (I) the 26th day of December.

(6) "Temporary employee" does not include an independent contractor or the employee of an independent contractor.

Sec. 2. A state employee is entitled to a paid day-off from work on each national holiday and state holiday if:

(1) the holiday does not fall on a Saturday or Sunday; and

(2) the General Appropriations Act does not prohibit state agencies from observing the holiday.

Sec. 3. A state agency must have enough state employees on duty during a state holiday to conduct the public business of the agency. This section does not apply to a state holiday that falls on a Saturday or Sunday, the fourth Friday of November, the 24th day of December, or the 26th day of December.

Sec. 4. A state employee who is required to work on a national holiday or a state holiday that does not fall on a Saturday or Sunday is entitled to compensatory time off during the 12-month period following the holiday. A state employee must give reasonable notice of the employee's intention to use the compensatory time, but is not required to say how the compensatory time will be used.

Sec. 5. (a) This section applies only to a state employee who normally works 40 hours per week on a schedule other than Monday through Friday.

(b) A state employee is entitled to paid holiday time-off during a fiscal year equal to eight hours multiplied by the number of national holidays and state holidays during the fiscal year as determined under Section 2 of this article.

(c) When a state employee works less than an entire fiscal year, the employee is entitled to paid holiday time-off during the fiscal year equal to eight hours multiplied by the number of national holidays and state holidays that occur during the period worked by the employee as determined under Section 2 of this article.

Sec. 6. (a) A state employee is entitled to a paid day-off on an optional holiday that does not fall on Saturday or Sunday if the employee agrees to relinquish during the same fiscal year a state holiday that does not fall on a Saturday or Sunday.

(b) When an optional holiday extends for more than one day, a state employee is entitled to a paid day-off on each day of the holiday if the employee agrees to relinquish an equivalent number of state holidays.

(c) A state employee may not agree to relinquish the fourth Friday of November, the 24th day of December, or the 26th day of December.

Sec. 7. A part-time state employee is a state employee for the purpose of this article with the following exceptions. When a part-time state employee is entitled to a paid day-off under this article, the amount of the employee's pay for the day must be proportionally reduced to account for the fewer hours the employee normally works. Section 5 of this article applies to a part-time employee who normally works other than Monday through Friday except that the paid holiday time-off during a fiscal year must be proportionally reduced to account for the fewer hours the employee normally works. An hourly or temporary state employee who normally works fewer than 40 hours per week is a part-time employee for the purpose of this section.

Sec. 8. (a) A state employee who begins working for a state agency on the first workday of a month is entitled to be paid for a state holiday or national holiday that occurs before the first workday if the holiday:

- (1) occurs during the month; and
- (2) does not fall on a Saturday or Sunday.

(b) A state employee who stops working for a state agency on the last workday of a month is entitled to be paid for a state holiday or national holiday that occurs after the last workday if the holiday:

- (1) occurs during the month; and
- (2) does not fall on a Saturday or Sunday.

(c) In this section, "workday" means a day on which a state employee is normally scheduled to work.

Sec. 9. This article applies to a state employee of the house of representatives or the senate only at the discretion of the presiding officer or the administration committee of each house.

SECTION 32. Chapter 341, Acts of the 52nd Legislature, 1951 (Article 6252-5, Vernon's Texas Civil Statutes), is repealed.

SECTION 33. Chapter 217, Acts of the 61st Legislature, Regular Session, 1969 (Article 6252-8a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. (a) In this Act, "state employee" ["Employee" as used in this Act] means an [any] appointed officer or an employee of [in] a state agency [department of the State] who normally works at least [is employed on a basis or a position normally requiring not less than] 900 hours per year[;]. The term includes an hourly or a temporary state employee.

(b) The term "state employee" does [but shall] not include:

- (1) a member [members] of the legislature [Legislature];

(2) a person who holds ~~[or any incumbent of]~~ an office normally filled by vote of the people;

(3) a person employed ~~[nor persons]~~ on a piecework basis;

(4) an operator ~~[nor operators]~~ of equipment or a driver of a team ~~[drivers of teams]~~ whose wages are included in the rental ~~[rate]~~ paid by a state agency to the owner ~~[owners]~~ of the ~~[said]~~ equipment or team;

(5) a ~~[nor any]~~ person ~~[who is]~~ covered by the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(6) a ~~[nor any]~~ person ~~[who is]~~ covered by the Teacher Retirement System of Texas; or

(7) an independent contractor or the employee of an independent contractor.

(c) Notwithstanding Subsection (b)(6) of this section, the term "state employee" includes ~~[, except]~~ a person ~~[persons]~~ employed by the Teacher Retirement System, the Central Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District of the Texas Department of Criminal Justice, or the Texas Rehabilitation Commission. The term also includes a ~~[, and]~~ classified, administrative, faculty, or ~~[and]~~ professional ~~[staff]~~ employee of ~~[members employed by]~~ a state ~~[State]~~ institution or agency of higher education who has ~~[have]~~ accumulated vacation leave or sick leave, or both, during the ~~[such]~~ employment.

Sec. 2. (a) Upon the death of a state employee, the state shall pay the employee's ~~[his]~~ estate for the employee's vacation leave and sick leave balances in accordance with the limits, if any, established by the General Appropriations Act. Notwithstanding the General Appropriations Act, the payment may not be for more than:

(1) all of the employee's accumulated vacation leave; and

(2) ~~[for]~~ one-half of the employee's ~~[his]~~ accumulated sick leave.

(b) A state agency must use the state employee's compensation rate at the time of his death to calculate the amount of a payment. An emolument in-lieu-of base-pay must be included in the compensation rate if the employee was eligible for the emolument on the last day of employment. Neither longevity pay nor hazardous duty pay may be included in the compensation rate. ~~[The payment shall be calculated at the rate of compensation being paid the employee at the time of his death.]~~

(c)(1) For calculation purposes, the total accumulated leave hours, as determined under Subsection (a) of this section, must be allocated over the workdays following the employee's death until the hours are completely allocated. For each state holiday or national holiday that occurs before the complete allocation of the hours, eight hours must be added to the total accumulated leave hours. The resulting number of hours must then be multiplied by the employee's hourly compensation rate to determine the amount of the payment.

(2) Subsection (c)(1) applies to a state employee who was normally scheduled to work fewer than 40 hours per week as of the last workday before the employee's death, with one exception. The number of holiday hours that is added to the employee's accumulated leave hours must be proportional to the fewer hours the employee was normally scheduled to work.

(d) If a general salary increase for state employees takes effect before the total accumulated leave hours are completely allocated, the increase may not be considered in calculating the amount of the payment.

(e) In this section:

(1) "National holiday" and "state holiday" have the meanings assigned by Article 4591.2, Revised Statutes.

(2) "Workday" includes a state holiday and a national holiday.

Sec. 3. Funds appropriated for salaries to the ~~[department or]~~ state agency for which the employee worked ~~must [shall]~~ be used in making the payments required [provided for] by this Act. A state agency must charge a payment under this Act to the fiscal year during which an employee's death occurred.

Sec. 3A. (a) This Act does not apply if a state employee dies before the employee has accrued six months of continuous state employment.

(b) A state employee is not required to accrue more than one six month period of continuous state employment during his lifetime.

(c) The term "continuous state employment" means employment with the state that is not interrupted by a period when a state employee is not being paid a regular state salary. The period when an employee is on leave without pay is not an interruption for the purpose of this subsection. However, the period does not count toward fulfilling the six month requirement if the period covers an entire calendar month or a multiple of entire calendar months.

SECTION 34. Sections 1 and 1A, Chapter 298, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-8b, Vernon's Texas Civil Statutes) are amended to read as follows:

Sec. 1. (a) A state employee who separates [resigns, is dismissed, or separated] from state employment is [shall be] entitled to be paid [in a lump sum] for the accrued balance of the employee's [all] vacation time as of [duly accrued at] the date [time] of separation [from state employment; provided the employee has had continuous employment with the state for six months].

(b) In this section:

(1) "State employee" means an employee or an appointed officer of a state agency who serves on a part-time or a full-time basis. The term includes an hourly or a temporary state employee.

(2) "State employee" does not include:

(A) a member of the legislature;

(B) a person who holds an office normally filled by vote of the people;

(C) a person employed on a piecework basis;

(D) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team;

(E) a person covered by the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(F) a person covered by the Teacher Retirement System of Texas except for:

(i) an employee of the Teacher Retirement System, the Central Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District of the Texas Department of Criminal Justice, or the Texas Rehabilitation Commission; and

(ii) a classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accumulated vacation leave during the employment; and

(G) an independent contractor or the employee of an independent contractor.

(c)(1) This section applies regardless of the reason for or mode of separation from state employment.

(2) For the purpose of this section, "separation from state employment" includes:

(A) a state employee leaving one state agency to begin working at another state agency, provided at least one workday occurs between the employee's separation from the first state agency and the employee's first day at work for the second state agency;

(B) a state employee moving from a position that accrues vacation time with a state agency to a position that does not accrue vacation time with the same agency provided the agency agrees to pay the employee for the accrued balance of the employee's vacation time; and

(C) a state employee moving from a position that accrues vacation time with a state agency to a position that does not accrue vacation time with a different state agency provided the latter state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move.

(d)(1) Except as provided in Subsection (e) of this section, a state agency must pay a state employee for his accrued vacation time in a lump sum.

(2) A state agency must calculate the amount of a lump-sum payment by using the state employee's compensation rate at the time of his separation from state employment. An emolument in-lieu-of base-pay must be included in the compensation rate if the employee was eligible for the emolument on the last day of employment. Neither longevity pay nor hazardous duty pay may be included in the compensation rate.

(3)(A) For calculation purposes, a state employee's accrued vacation time must be allocated over the workdays following the employee's separation from state employment until the time is completely allocated. For each state holiday or national holiday that occurs before the complete allocation of the vacation time, eight hours must be added to the accrued vacation time. The resulting number of hours must then be multiplied by the employee's hourly compensation rate to determine the amount of the payment.

(B) Subsection (d)(3)(A) applies to a state employee who was normally scheduled to work fewer than 40 hours per week as of the employee's last workday, with one exception. The number of holiday hours that is added to the employee's accrued vacation time must be proportional to the fewer hours the employee was normally scheduled to work.

(4) If a general salary increase for state employees takes effect before the accrued vacation time is completely allocated, the increase may not be considered in calculating the amount of the payment.

(5) In this subsection:

(A) "National holiday" and "state holiday" have the meanings assigned by Article 4591.2, Revised Statutes.

(B) "Workday" includes a state holiday and a national holiday.

(e)(1) If a state employee and the employee's employing state agency agree, the employee may remain on the agency's payroll to exhaust the employee's accrued vacation time.

(2) While remaining on the payroll, a state employee is entitled to continue receiving all the compensation and benefits that the employee was receiving on the employee's last day of duty, including paid holidays, longevity pay, and hazardous duty pay.

(3) If a general salary increase for state employees takes effect while a state employee is remaining on the payroll, the employee is entitled to the increase.

(4) A state employee may not use sick leave or accrue sick leave or vacation time while remaining on the payroll.

(f) When a person holds two or more positions, one or more of which accrues vacation time, and the person terminates from one of the accruing positions, the

person has separated from state employment for the purpose of this section with respect to the position from which the person terminates.

(g) This section does not apply if a state employee separates from state employment before the employee has accrued six months of continuous state employment. A state employee is not required to accrue more than one six month period of continuous state employment during his lifetime. The term "continuous state employment" means employment with the state that is not interrupted by a period when a state employee is not being paid a regular state salary. The period when an employee is on leave without pay is not an interruption for the purpose of this subsection. However, the period does not count toward fulfilling the six month requirement if the period covers an entire calendar month or a multiple of entire calendar months.

(h) A state agency must charge a lump-sum payment for accrued vacation time to the fiscal year in which an employee's separation from service becomes effective.

Sec. 1A. A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for any accumulated vacation leave accrued at the time of retirement. The amount paid shall be computed in the same manner as if the member had taken vacation leave at the rate of compensation being paid the member at the time of retirement and is payable on the date of retirement. Section 1 of this Act prevails over this section if an irreconcilable conflict exists between the two sections.

SECTION 35. Title 110A, Revised Statutes, is amended by adding Article 6252-31 to read as follows:

Art. 6252-31. EXPENDITURES BY STATE AGENCIES

Sec. 1. In this article:

(1) "Chief deputy" means the individual who is authorized by law to administer a state agency that is headed by an elected or appointed state official during the absence of the official or during the official's inability to act.

(2) "Executive director" means the individual who is the chief administrative officer of a state agency that is headed by a governing body. The term excludes a member of a governing body.

(3) "Governing body" means a board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency.

(4) "Head of agency" means the elected or appointed state official who is authorized by law to administer a state agency.

(5) "State agency" means a department, board, commission, committee, council, agency, office, or other entity that is in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term excludes a public junior college and an entity the jurisdiction of which is limited to a geographical portion of the state.

Sec. 2. (a) A state agency may expend appropriated funds only upon a warrant drawn by the comptroller of public accounts.

(b) The comptroller may not draw a warrant until:

(1) the state agency from whose appropriations the warrant is payable has submitted a voucher to the comptroller;

(2) the state agency has approved the voucher in accordance with this article; and

(3) the comptroller has audited and approved the voucher as required by law.

(c) This article does not prohibit the comptroller from using an electronic funds transfer system in lieu of issuing a warrant. The requirements in this article for the

submission and approval of vouchers also apply when the comptroller uses an electronic funds transfer system.

Sec. 3. (a) A state agency headed by a governing body may approve a voucher only in accordance with this section.

(b) The chairman of a governing body may approve a voucher anytime after submitting a signature card to the comptroller.

(c) An officer or employee of the state agency submitting a voucher may approve the voucher anytime after:

(1) the governing body of the agency has authorized the officer or employee to approve vouchers;

(2) the comptroller has received written notice from the chairman of the governing body that the governing body has authorized the officer or employee to approve vouchers; and

(3) the comptroller has received a signature card from the officer or employee.

(d) A governing body may revoke its authorization of an officer or employee to approve vouchers. When a governing body revokes an authorization, the chairman of the governing body shall ensure that the comptroller receives written notice of the revocation by no later than the 10th day after the effective date of the revocation.

(e) A governing body may authorize either its chairman or its executive director to designate an officer or employee to approve vouchers and to revoke those designations when necessary. Before the chairman or executive director may make or revoke designations, the chairman must notify the comptroller in writing that the governing body has granted the necessary authority to the chairman or executive director.

Sec. 4. (a) A state agency headed by an elected or appointed state official may approve a voucher only in accordance with this section.

(b) A head of agency may approve a voucher anytime after submitting a signature card to the comptroller.

(c) An officer or employee may approve a voucher anytime after:

(1) the head of agency has delegated the authority to approve vouchers to the officer or employee;

(2) the comptroller has received written notice from the head of agency that he has delegated to the officer or employee the authority to approve vouchers; and

(3) the comptroller has received a signature card from the officer or employee.

(d) A head of agency may revoke his authorization of an officer or employee to approve vouchers. The head of agency shall ensure that the comptroller receives written notice of a revocation by no later than the 10th day after its effective date.

(e) A head of agency may authorize his chief deputy to designate an officer or employee to approve vouchers and to revoke designations when necessary. The chief deputy may exercise the authority after the comptroller has received written notice from the head of agency that he has delegated the authority to the chief deputy.

Sec. 5. This article does not prohibit a state agency from designating more than one officer or employee of the agency to approve the agency's vouchers.

Sec. 6. (a) The comptroller may establish by rule a system for the electronic submission and approval of vouchers by state agencies if the comptroller determines that the system will facilitate the operation and administration of the uniform statewide accounting system.

(b) If the comptroller establishes a system for the electronic submission and approval of vouchers, Sections 2 through 5 do not apply except to the extent that

the sections require a state agency to approve its vouchers. The comptroller may devise electronic means for approving vouchers.

(c) An electronic system must provide a level of security at least as great as the level of security that would be provided by Sections 2 through 5.

Sec. 7. (a) When a state agency sends a voucher and related documentation to the State Purchasing and General Services Commission for approval, only the commission itself may approve the voucher unless the commission has already designated officers or employees of the commission to approve vouchers. The commission shall give written notice of those designations to the comptroller together with signature cards from the individuals designated.

(b) The comptroller may establish by rule a system for the electronic approval of vouchers by the State Purchasing and General Services Commission. An electronic voucher approval system must provide a level of security at least as great as the level of security that would be provided by Subsection (a) of this section.

Sec. 8. (a) The State Highway Commission may delegate to one or more employees of the State Department of Highways and Public Transportation the authority to approve vouchers for expenditures from the State Highway Fund and the authority to approve and sign contracts and other documents. These delegations of authority must be limited to effectuating the orders, policies, and work programs of the commission.

(b) The State Highway Commission may require a recipient of a delegation of authority to post a bond payable to the state in the amount the commission deems necessary. If the commission requires the posting of a bond, the bond must be conditioned upon faithful performance. The commission shall pay the premium on all bonds from the State Highway Fund.

Sec. 9. This article does not apply to an expenditure from an appropriated local fund. However, this article applies when a state agency seeks the reimbursement of an appropriated local fund for an expenditure from the fund.

SECTION 36. (a) Chapter 718, Acts of the 66th Legislature, Regular Session, 1979 (Article 6813d, Vernon's Texas Civil Statutes) is repealed.

(b) The repeal does not affect the eligibility of state employees to receive or continue receiving longevity pay under Sections 1(b) and 1(c), Chapter 211, Acts of the 66th Legislature, Regular Session, 1979 (Article 6252-20b, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 57, Acts of the 70th Legislature, Second Called Session, 1987.

SECTION 37. Title 117, Revised Statutes, is amended by adding Article 6813d-1 to read as follows:

Article 6813d-1. LONGEVITY PAY FOR STATE EMPLOYEES

Sec. 1. DEFINITIONS. In this article:

(1) "Full-time state employee" means:

(A) a state employee who works in the executive or judicial branch of state government and who is normally scheduled to work at least 40 hours per week in one position; or

(B) a state employee who works in the legislative branch of state government and who is normally scheduled to work a total of 40 or more hours per week in all positions held in the legislative branch.

(2) "Part-time state employee" means a state employee who is not a full-time state employee.

(3) "Regular, non-academic employee" means a person who works in a non-academic position at least 20 hours per week for at least 4.5 consecutive months.

(4) "State employee" means, except as specified in Section 1(5) of this article, a person who:

(A) is covered by the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes);

(B) holds a line item or exempt position;

(C) is a regular non-academic employee of a state institution of higher education; or

(D) is an hourly employee of the state.

(5) "State employee" does not include:

(A) a member of the legislature;

(B) a person who holds a statewide office that is normally filled by vote of the people;

(C) an independent contractor or the employee of an independent contractor;

(D) a temporary employee;

(E) an officer or employee of a public junior college; or

(F) an academic employee of a state institution of higher education.

(6) "Temporary employee" does not include an independent contractor or the employee of an independent contractor.

Sec. 2. ENTITLEMENT. A person's compensation for a month includes longevity pay if:

(1) the person is a full-time state employee on the first workday of the month;

(2) the person is not on leave without pay on the first workday of the month; and

(3) the person has accrued at least five years of lifetime service credit by no later than the last day of the preceding month.

Sec. 3. AMOUNT. (a) The monthly amount of longevity pay is \$4 for each year of lifetime service credit. The amount increases when the 10th, 15th, 20th, and 25th year of lifetime service credit is accrued. An increase is effective beginning with the month following the month in which the 10th, 15th, 20th, and 25th year of lifetime service credit is accrued.

(b) A person may not receive from the state as longevity pay more than \$4 for each year of lifetime service credit, regardless of the number of positions the person holds or the number of hours the person works each week.

Sec. 4. CHANGE IN STATUS. When a state employee ceases being a full-time state employee after the first workday of a month, the employee's compensation for the month includes full longevity pay if the employee otherwise qualifies for the pay.

Sec. 5. ACCRUAL OF LIFETIME SERVICE CREDIT. (a) For the purpose of this article, a person accrues lifetime service credit for the period the person:

(1) serves as a full-time state employee;

(2) serves as a part-time state employee;

(3) serves as a temporary state employee;

(4) serves as a member of the legislature;

(5) holds a statewide office that is normally filled by vote of the people;

(6) serves as an academic employee of a state institution of higher education; or

(7) otherwise serves as an employee of the state.

(b) A person who is on leave without pay for an entire calendar month does not accrue lifetime service credit for the month. A person who is on leave without pay for less than an entire calendar month accrues lifetime service credit for the month if the person otherwise qualifies to accrue the credit under Subsection (a) of this section.

(c) A person who simultaneously holds two or more positions that each accrue lifetime service credit may accrue lifetime service credit for only one of those positions.

(d) A person who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first calendar day of the month for the purpose of this article.

(e) An officer or employee of a public junior college does not accrue lifetime service credit for the purpose of this article.

Sec. 6. RULES. The comptroller of public accounts shall adopt rules to administer this article.

SECTION 38. Article 6826, Revised Statutes, is amended to read as follows:

Sec. 1. Except as provided by Section 2 of this article, the annual salaries provided for in this title shall be paid monthly:

(a) on warrants drawn by the comptroller [Comptroller] on the treasurer [Treasurer]; or

(b) via an electronic funds transfer system in accordance with Section 403.016, Government Code.

Sec. 2. (a) This section applies to an [An] employee of the Texas Department of Mental Health and Mental Retardation, the State Department of Highways and Public Transportation, the Texas Department of Human Services, [Resources, or] the the Texas Employment Commission, or [of] any other state agency designated by the comptroller. [Comptroller]

(b) An employee is entitled to be paid his employment compensation twice a month if:

(1) the employee holds a classified position under the state's position classification plan;

(2) the position is classified below salary group 12 under the classification salary schedule in [prescribed by] the General Appropriations Act;

(3) the employing [employee's] state agency satisfies [meets] the comptroller's requirements [established by the Comptroller] relating to the payment of compensation twice a month; and

(4) at least 30 percent of the eligible employees of the agency participate in the program to pay compensation twice a month.

Sec. 3. (a) Except as provided by Subsection (b) of this section, the treasurer [Treasurer] may not pay the salary of a state officer or employee before the first working day of the month following the payroll period.

(b) An employee paid twice a month under Section 2 of this article shall be paid on:

(1) the first working day of the month following the payroll period that covers the last half of the preceding month; and

(2) the 15th day of the month or the first working day after the 15th for the payroll period that covers the first half of the month.

(c) In this section, "working day" means a day other than Saturday, Sunday, a national holiday, or a state holiday as listed in the General Appropriations Act or Article 4591.2, Revised Statutes. A day does not cease to be a holiday because a state agency maintains or is required to maintain a minimum working staff on the holiday.

SECTION 39. All laws that conflict with Section 35 of this Act are repealed to the extent of the conflict, including laws that apply to one or a limited number of state agencies and laws passed by the 72nd Legislature, Regular Session.

SECTION 40. Section 34, Chapter 207, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 34. All petty cash funds or accounts that were established under prior law are abolished. The comptroller shall develop and implement necessary

procedures for closing all existing petty cash funds or accounts. Notwithstanding any provision in a General Appropriations Act or other law, this Act is the sole authority for the maintenance and establishment of petty cash funds and accounts with the exceptions listed in Section 404.149, Government Code. [~~However, this Act does not apply to the petty cash accounts of state agencies whose funds are maintained completely outside the state treasury.~~]

SECTION 41. The third paragraph of Article V, Section 8.1. of the General Appropriations Act for fiscal years 1992-1993 is amended to read as follows:

Credit for the higher rate of accrual as shown on the chart above shall be given on the first calendar day of the month if the employee's anniversary date falls on the first calendar day of the month; otherwise, the increase will occur on the first calendar day of the following month. If an employee begins working in a position that accrues vacation leave on the first workday of the month, the employee is deemed to have begun working on the first calendar day of the month for the purpose of this subsection.

SECTION 42. (a) Section 40 of this Act is Section 44 of this Act for the purpose of Section 4, S.B. 1358, Acts of the 72nd Legislature, Regular Session, 1991, and for the purpose of Section 4, H.B. 2390, Acts of the 72nd Legislature, Regular Session, 1991.

(b) Section 44 of this Act is Section 45 of this Act for the purpose of Section 4, S.B. 1358, Acts of the 72nd Legislature, Regular Session, 1991, and for the purpose of Section 4, H.B. 2390, Acts of the 72nd Legislature, Regular Session, 1991.

SECTION 43. This Act takes effect September 1, 1991.

SECTION 44. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Committee Amendment - Carter

Amend C.S.S.B. 1095 as follows:

On page 21, line 13, strike Sec. 1 and substitute the following:

Sec. 1. In this article:

(1) "National holiday" means:

- (A) the first day of January;
- (B) the third Monday in January;
- (C) the third Monday in February;
- (D) the last Monday in May;
- (E) the fourth day of July;
- (F) the first Monday in September;
- (G) the eleventh day of November;
- (H) the fourth Thursday in November;
- (I) the 25th day of December.

(2) "Optional holiday" means Rosh Hashanah, Yom Kippur, and Good Friday.

(3) "State agency" means a board, commission, council, department, committee, agency, office, or other unit of state government that was created by the constitution or a statute of this state and that is in the executive, legislative, or judicial branch of state government. The term does not include a local government, a river authority, a special district, a political subdivision, or an institution of higher education as defined by Section 61.003, Education Code.

(4) "State employee" means an appointed, non-constitutional officer or an employee of a state agency. The term includes a part-time, hourly, or temporary state employee.

(5) "State holiday" means:

- (A) the 19th of January;
- (B) the second day of March;
- (C) the 21st day of April;
- (D) the 19th day of June;
- (E) the 27th day of August;
- (F) every day on which an election is held throughout

the state;

- (G) the fourth Friday of November;
- (H) the 24th day of December; and
- (I) the 26th day of December.

(6) "Temporary employee" does not include an independent contractor or the employee of an independent contractor.

The amendments were read.

On motion of Senator Lucio and by unanimous consent, the Senate concurred in the House amendments to S.B. 1095 by a viva voce vote.

SENATE BILL 1048 WITH HOUSE AMENDMENT

Senator Leedom called S.B. 1048 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Eckels

Amend S.B. 1048 as follows:

On page 2, line 3, strike subsection (g) entirely and substitute the following:

(g) Notwithstanding Rule 53(j), Texas Rules of Appellate Procedure, an official court reporter who is required to prepare a transcript in a criminal case without charging a fee is not entitled to payment for the transcript from the state or county if the county paid a substitute court reporter to perform the official court reporter's regular duties while the transcript was being prepared. To the extent that this subsection conflicts with the Texas Rules of Appellate Procedure, this subsection controls. Notwithstanding Sections 22.004 and 22.108(b), the supreme court or the court of criminal appeals may not amend or adopt rules in conflict with this subsection.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to S.B. 1048 by a viva voce vote.

SENATE BILL 1106 WITH HOUSE AMENDMENT

Senator Sims called S.B. 1106 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Earley

Amend S.B. 1106 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the leasing, development, and management of minerals owned by the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.001 (4), Natural Resources Code, is amended to read as follows:

(4) "Land" means:

(A) land dedicated to the permanent school fund and the asylum funds by the constitution and laws of this state;

(B) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state;

(C) the mineral estate in river beds and channels; and

(D) land owned by the state or held in trust for the use and benefit of the state or of a department, board, or agency of the state.

SECTION 2. Section 32.002, Natural Resources Code, is amended to read as follows:

Sec. 32.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) land dedicated by the constitution or a law of this state to The University of Texas System, land donated by a will or instrument in writing or otherwise to The University of Texas System, as trustee, for a scientific, educational, or other charitable or public purpose, or any other land under the control of the Board of Regents of The University of Texas System;

(2) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System or land under the control of the Board of Regents of The Texas A&M University System;

(3) land subject to lease under Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act;

(4) oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley, which is located in a producing area, unless the oil or gas is leased for the specific purpose of drilling a horizontal well;

(5) oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley if the State Highway and Public Transportation Commission has determined that such right-of-way is no longer needed for use by citizens as a road pursuant to Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes);

(6) land owned by the Texas Parks and Wildlife Department; or

(7) land owned by the Texas Department of Corrections.

(b) For purposes of Subsection (a)(4) of this section, land is located in a producing area if the closest boundary line of the surface of such land is within 2,500 feet of a well capable of producing oil or gas in paying quantities as of January 1, 1985.

(c) Oil and gas underlying land not located within a producing area or that is leased for the specific purpose of drilling a horizontal well may be leased under the provisions of Section 32.201 of this code.

(d)[(c)] If title to land subject to Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act, is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 52 of this code for the leasing of unsold public school land.

SECTION 3. Section 32.202, Natural Resources Code, is amended to read as follows:

Sec. 32.202. POOLING. Any oil and gas lease offered under Sec. 32.201 of this code shall provide:

(1) authority for pooling all of the leased area into units of no more than 160 acres for an oil well or 640 acres for a gas well plus a 10 percent tolerance,

or of a unit size allowed under or prescribed by rules of the Railroad Commission of Texas;

(2) that the production allocable to the state lease shall be based upon the surface acreage of the state lease included in the unit;

(3) that the unit operations, production from any portion of the unit or payment of shut-in gas well royalty on a lease or unit well shall be considered for all purposes to be the conduct of operations and production on the state lease; and

(4) that neither unit production of oil or gas, nor unit operations, nor payment of shut-in royalties from a unit gas well, shall serve to hold the lease in force as to any area outside the unit, regardless of whether the production, maintenance of a shut-in gas well, or operations are actually located on the state tract or not.

SECTION 4. Article 6673a-1, Revised Statutes, is amended to read as follows:

Art 6673a-1. LEASE OF RIGHT-OF-WAY FOR DEVELOPMENT OF OIL AND GAS. The State Highway and Public Transportation Commission may not lease oil and gas owned by the state ~~located in producing areas as defined by~~ Section

32.002(b){34.002}, Natural Resources Code; underlying land that was acquired to construct or maintain a highway, road, street, or alley.

SECTION 5. Section 51.020 (a), Natural Resources Code, is amended to read as follows:

Sec. 51.020. Refunds. (a) On presentation of proper proof, money paid in good faith to a fund in the State Treasury for public land or by a lessee of public land or minerals to which the fund is not entitled may be offset or credited by the Commissioner against other sums owing or shall be refunded by the comptroller in the following instances:

(1) if an error is made in good faith and the refund, stating to whom payment is to be made, is supported by the official signature of the commissioner or the attorney general;

(2) if the payment is made according to law but title cannot issue or possession cannot pass because of a conflict in boundaries, an erroneous sale, an erroneous lease, or other cause;

(3) if there is a sale of leased land;

(4) if lease money is paid on a previous forfeited sale and the sale has been reinstated and the interest paid;

(5) if erroneous timber sales or leases have been made;

(6) if overpayments have been made in final payments to the State Treasurer because of decreased acreage or other cause;

(7) if payments are made in good faith by claimants of land where the applicants have no right to purchase the land as revealed by investigation of title.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Sims moved to concur in the House amendment to S.B. 1106.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT
ON SENATE JOINT RESOLUTION 6**

Senator Leedom submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.J.R. 6 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LEEDOM
LUCIO
SIMS
ZAFFIRINI

On the part of the Senate

ROBNETT
SOILEAU
KUEMPEL
KUBIAK
DELISI

On the part of the House

A JOINT RESOLUTION

proposing a constitutional amendment relating to investments by statewide public retirement systems.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XVI, Section 67(a)(3), of the Texas Constitution is amended to read as follows:

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such manner [securities] as the board may consider prudent [investments]. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 5, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow the board of trustees of a statewide public retirement system to invest funds of the system in a manner that the board considers prudent."

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 1375 WITH HOUSE AMENDMENT

Senator Lyon called S.B. 1375 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Kamel

Amend **S.B. 1375** as follows:

(1) Add new **SECTION 2** as follows and renumber the remaining Sections:
SECTION 2. Chapter 285, Health and Safety Code, is amended by adding Subchapter F to read as follows:

**SUBCHAPTER F. TERMS OF MEMBERS
OF GOVERNING BOARDS**

Sec. 285.081. TERMS. (a) The governing board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled and the members elected shall serve two-year terms. The subsequent election of board members previously scheduled to be held in odd-numbered year shall be held as scheduled and the members elected shall serve three-year terms. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

(c) This section does not apply to a hospital district created under Chapter 281, Chapter 282 and Chapter 283.

The amendment was read.

Senator Lyon moved to concur in the House amendment to **S.B. 1375**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1203 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1203** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Craddick

Amend **S.B. 1203** as follows:

Strike the entire first sentence of Section 341.068(b) in Section 1 of the bill and substitute the following:

(b) The board shall adopt rules to implement Subsection (a) including a rule that, in providing sufficient restrooms, a ratio of not more than 3:2 women's to men's restrooms shall be maintained if the use of the restrooms is designated by gender.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1203** by a viva voce vote.

SENATE BILL 1314 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1314** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Naishtat

Amend S.B. 1314 as follows:

(1) In Section 1 of the bill strike Section 54.976.(a)(1), Government Code, and substitute (1) a negotiated plea of guilty and sentencing before the court that has been given initial, but not final, approval by the referring judge; and

(2) In Section 1 of the bill, strike Section 54.978.(a)(13), Government Code, and substitute (13) in any case referred under Section 54.976(a)(1):

(A) accept a negotiated plea of guilty;

(B) enter a finding of guilt and impose or suspend sentence;

or

(C) defer adjudication of guilty; and

The amendment was read.

Senator Barrientos moved to concur in the House amendment to S.B. 1314.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1217 WITH HOUSE AMENDMENT

Senator Armbrister called S.B. 1217 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Saunders

Amend S.B. 1217 by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the control of exotic animals as depredating animals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 43.103, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.103. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a mechanical or other device used for flight in the air.

(2) "Depredating animals" means bobcats, feral hogs, red foxes, exotic animals, coyotes, and crossbreeds between coyotes and dogs but does not include birds or fowl.

(3) "Exotic animals" includes exotic animals as defined by Section 62.015 of this code and wild animals that are non-indigenous to Texas that are defined by Section 12.601 of this code.

(4) "Harass" means to disturb, worry, molest, harry, torment, rally, concentrate, drive or herd.

(5) [(4)] "Manage by the use of aircraft" means to count, photograph, relocate, or capture by the use of aircraft.

(6) [(5)] "Wildlife" means any vertebrate species other than a domesticated animal.

SECTION 2. Section 62.015(e) Parks and Wildlife Code, is amended to read as follows:

(e) Subsection (d) of this section does not apply to the owner or employee of the owner of the exotic animal, a person who holds a permit to control depredating animals from an aircraft under Subchapter G, Chapter 43, of this code, a public health officer, a law enforcement officer, or a veterinarian.

SECTION 3. Section 1.101, Parks and Wildlife Code, is amended by adding Subdivision (4) to read as follows:

(4) "Wild," when used in reference to an animal, means a species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated. This definition does not include exotic livestock defined by Section 161.001 (a)(3) and (4), Agriculture Code.

SECTION 4. This Act takes effect September 1, 1991.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendment to S.B. 1217 by a viva voce vote.

(President in Chair)

SENATE BILL 1033 WITH HOUSE AMENDMENTS

Senator Bivins called S.B. 1033 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Ogden

Amend S.B. 1033, page 1, line 22 by striking the period after "\$500,000" and inserting after "\$500,000" the words "with a maximum risk of loss of \$2,500,000."

Amendment - Ogden

Amend S.B. 1033, page 2, line 15 by striking the period after "1993" and inserting after "1993" the words "or if the total cumulative losses exceed \$2,500,000 whichever comes first.".

The amendments were read.

Senator Bivins moved to concur in the House amendments to S.B. 1033.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1258

Senator Dickson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1258 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1258 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Dickson, Chair; Haley, Carriker, Leedom, Brooks.

CONFERENCE COMMITTEE ON HOUSE BILL 806

Senator Dickson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 806 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 806** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Dickson, Chair; Armbrister, Lyon, Brooks, Sims.

CONFERENCE COMMITTEE ON HOUSE BILL 2411

Senator Lyon called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2411** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 2411** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lyon, Chair; Green, Johnson, Brooks, Moncrief.

CONFERENCE COMMITTEE ON HOUSE BILL 864

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 864** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 864** before appointment.

Senator Krier moved to instruct the Conference Committee to retain the Senate language pertaining to fish farms.

The motion prevailed.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chair; Sims, Armbrister, Truan, Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 2657

Senator Leedom called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2657** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 2657** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Leedom, Chair; Armbrister, Lucio, Ratliff, Sims.

CONFERENCE COMMITTEE ON HOUSE BILL 9

Senator Lyon called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 9 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 9 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lyon, Chair; Brown, Ellis, Harris of Tarrant, Parker.

CONFERENCE COMMITTEE ON HOUSE BILL 734

Senator Barrientos called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 734 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 734 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Ellis, Krier, Moncrief, Rosson.

CONFERENCE COMMITTEE ON HOUSE BILL 2812

Senator Barrientos called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2812 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 2812 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Green, Dickson, Whitmire, Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 341

Senator Green called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 341 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 341 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Ellis, Brooks, Henderson.

CONFERENCE COMMITTEE ON HOUSE BILL 1770

Senator Lucio called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1770** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1770** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Armbrister, Brown, Sims, Ratliff.

CONFERENCE COMMITTEE ON HOUSE BILL 546

Senator Rosson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 546** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 546** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Rosson, Chair; Dickson, Armbrister, Ellis, Parker.

CONFERENCE COMMITTEE ON HOUSE BILL 1004

Senator Johnson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1004** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1004** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Johnson, Chair; Carriker, Parker, Brooks, Bivins.

CONFERENCE COMMITTEE ON HOUSE BILL 263

Senator Ellis called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 263** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 263** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Krier, Rosson, Brown, Lyon.

CONFERENCE COMMITTEE ON HOUSE BILL 2140

Senator Ellis called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2140 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 2140 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Lyon, Sims, Zaffirini, Green.

CONFERENCE COMMITTEE ON HOUSE BILL 2555

Senator Brown called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2555 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 2555 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Green, Henderson, Harris of Dallas, Armbrister.

SENATE BILL 873 WITH HOUSE AMENDMENTS

Senator Armbrister called S.B. 873 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Harris

Amend S.B. 873, Section 11, by adding subsection (e) as follows: "The Board and the Department of Human Services shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the U.S. Food and Drug Administration."

Amendment - Harris

Amend S.B. 873 by deleting all of Section 16 and renumber subsequent sections appropriately.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 873 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Brooks, Haley, Krier, Moncrief.

SENATE BILL 359 WITH HOUSE AMENDMENT

Senator Green called S.B. 359 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Black

Amend S.B. 359 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and operation of the Board of Law Examiners and to the function of the board and the state supreme court concerning the licensing of attorneys.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 82.001(b), Government Code, is amended to read as follows:

(b) The supreme court biennially shall appoint the members of the board for two-year terms that expire August 31 [~~September 30~~] of each odd-numbered year. A member is subject to removal by the supreme court as provided by Section 82.0021 [~~for incompetency or inattention to duty~~].

SECTION 2. Subchapter A, Chapter 82, Government Code, is amended by adding Section 82.0021 to read as follows:

Sec. 82.0021. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the Board of Law Examiners if a member:

(1) does not have, at the time of appointment, the qualifications required by Section 82.001;

(2) does not maintain during service on the board the qualifications required by Section 82.001;

(3) violates a prohibition established by Section 82.002;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend in a calendar year unless the absence is excused by a majority vote of the board;

(6) is incompetent; or

(7) is inattentive to the member's duties.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the supreme court that a potential ground for removal exists.

SECTION 3. Section 82.004, Government Code, is amended by adding Subsection (e) to read as follows:

(e) In each city in which an examination is administered, the board shall provide facilities that enable persons having physical, mental, or developmental disabilities to take the examination.

SECTION 4. Section 82.006, Government Code, is amended to read as follows:

Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners is subject to [the Texas Sunset Act] Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2003 [1991].

SECTION 5. Subchapter A, Chapter 82, Government Code, is amended by adding Sections 82.007, 82.008, and 82.009 to read as follows:

Sec. 82.007. PERSONNEL. (a) The executive director of the Board of Law Examiners or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(c) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(f) A policy statement prepared under Subsection (e) must cover an annual period, be updated at least annually, and be filed with the supreme court and the governor's office.

(g) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 82.008. PUBLIC INFORMATION. (a) The Board of Law Examiners shall prepare information of public interest describing the functions of the board. The board shall make the information available to the public and appropriate agencies.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. However, the board may prohibit public testimony that would reveal the examination questions described by Section 82.003(b) or would relate to the moral character or fitness of an applicant for a license.

Sec. 82.009. PROGRAM ACCESSIBILITY. The Board of Law Examiners shall prepare and maintain a written plan that describes how a person who has a physical, mental, or developmental disability can be provided reasonable access to the board's programs.

SECTION 6. Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.0271 to read as follows:

Sec. 82.0271. RESIDENCY OR CITIZENSHIP STATUS OF APPLICANT. A person who has applied to take the bar examination may not be denied admission to the bar examination based on the applicant's lack of:

- (1) permanent residency in the United States; or
- (2) United States citizenship.

SECTION 7. Section 82.035, Government Code, is amended to read as follows:

Sec. 82.035. AUDIT; FINANCIAL REPORT. (a) The financial transactions of the Board of Law Examiners are subject to audit by the state auditor in accordance with Chapter 321[, Government Code].

(b) The board shall file annually with the supreme court, the governor, and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received or disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 8. Section 82.035, Government Code, is amended to read as follows:

Sec. 82.036. Foreign Attorneys.

[(a) The Board of Law Examiners shall recommend to the supreme court that it license and the supreme court shall issue a license to an applicant who:

(1) has practiced law for at least three years; and

(2) has a license to practice law issued by another state whose licensing standards are at least equivalent to the licensing standards of this state;

(b) If an applicant is from another state whose licensing standards are not equivalent to or do not exceed those of this state but the applicant otherwise meets the requirements of Subsection (a), the board may require the applicant to take the examination for a license to practice law;

(c) All foreign attorneys licensed as provided by this section must furnish satisfactory proof of good moral character and fitness.]

The supreme court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this state as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character.

SECTION 9. (a) The change made by this Act to Section 82.001(b), Government Code, relating to the expiration date of the terms of members of the Board of Law Examiners, applies only to members' terms expiring in 1993 or a later odd-numbered year. Members' terms expiring in 1991 expire September 30, 1991.

(b) The first policy statement required to be filed under Section 82.007(f), Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 10. Sections 82.026, 82.031, and 82.032, Government Code, are repealed.

SECTION 11. This Act takes effect September 1, 1991.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Green moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 359 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Dickson, Whitmire, Harris of Tarrant, Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 1492

Senator Lucio called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1492 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1492 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Lyon, Tejada, Montford, Glasgow.

SENATE BILL 1480 WITH HOUSE AMENDMENT

Senator Glasgow called S.B. 1480 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment - F. Hill

Amend S.B. 1480 as follows:

On page 1, line 24, add a new subsection "(e)" to read as follows:

(e) Notwithstanding any other provision of law, the fee, or any part thereof, collected under this Act shall not be expended, pledged, or otherwise allocated for the free distribution of contraceptives.

The amendment was read.

Senator Glasgow moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1480 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chair; Parker, Barrientos, Haley, Johnson.

(Senator Brooks in Chair)

SENATE BILL 1543 WITH HOUSE AMENDMENTS

Senator Parker called S.B. 1543 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Stiles

Amend S.B. 1543 by striking SECTION 4 and inserting a new section to read as follows:

SECTION 4. Chapter 240, Local Government Code, is amended by adding a new Section 240.904 to read as follows:

Sec. 240.904. LAND USE REGULATION FOR FLOOD CONTROL IN TRINITY RIVER BASIN. (a) The commissioners court of a county located below the dam of Lake Livingston with all or part of its area within the 100-year floodplain of the Trinity River basin as described by county maps developed according to Federal Emergency Management Agency requirements may adopt and enforce rules that regulate the future construction of residences and the laying out of residential lots or the development of subdivisions in that portion of the county located in the 100-year floodplain of the Trinity River basin.

(b) Before the commissioners court may adopt and enforce the rules described in Subsection (a) of this section the commissioners court must make a determination that the rules are necessary to protect the health and safety of the public by reducing the damage caused by flooding in the 100-year floodplain.

(c) The rules described in Subsection (a) of this section apply only to development and construction commenced after the effective date of this Act for:

(1) the flood-proofing of structures constructed or placed in the floodplain;

(2) the type of structures which may be constructed or placed in the floodplain;

(3) the minimum elevation of structures constructed or placed in the floodplain; and

(4) specification for drainage of residential lots or subdivisions to be laid out in the floodplain.

Amendment - Stiles

Amend S.B. 1543 as follows:

On page 2, Sec. 51.853. COOPERATION WITH AUTHORITY AND OWNERS. beginning in line 5 to read as follows:

Sec. 51.853. COOPERATION WITH AUTHORITY AND OWNERS. The commission, in conjunction with the authority and all reservoir owners in the Trinity River basin, may review, at least every ten years, all water rights permits affecting the basin.

Amendment - Stiles

Amend Section 4 of S.B. 1543 by adding a new subsection (d) to Section 240.904, Chapter 240, Local Government Code, to read as follows:

(d) The commissioners court may not regulate new manufactured or industrialized housing, constructed to preemptive state or federal building

standards, for siting or zoning purposes in any manner that is different from regulation of site-built housing.

The amendments were read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendments to S.B. 1543 by a viva voce vote.

SENATE BILL 1341 WITH HOUSE AMENDMENT

Senator Parker called S.B. 1341 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Harris

Amend S.B. 1341 as follows:

(1) On page 32, between lines 14 and 15, insert the following: "SECTION 3. If any provision of this Act conflicts with the provisions of H.B. 79, Acts of the 72nd Legislature, Regular Session, 1991, to the extent of any conflict, the provisions of H.B. 79, Acts of the 72nd Legislature, Regular Session, 1991, prevail."

(2) On page 32, line 15, renumber Section 3 as Section 4.

The amendment was read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendment to S.B. 1341 by a viva voce vote.

SENATE BILL 772 WITH HOUSE AMENDMENTS

Senator Henderson called S.B. 772 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Stiles

Amend S.B. 772 as follows:

(1) Amend Article 1, Section 1.2, by striking Section 25.21(c), Tax Code, as added by that section.

(2) Amend Article 1 by striking Section 1.5 of that article.

(3) Strike Article 5 and substitute the following:

ARTICLE 5

SECTION 5.1. Section 33.011, Tax Code, is amended to read as follows:

Sec. 33.011. **WAIVER OF PENALTIES AND INTEREST.** The governing body of a taxing unit shall waive penalties and may provide for the waiver of ~~[penalties and]~~ interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency. A request for a waiver of penalties under this section must be made within six months of the delinquency date.

SECTION 5.2. This article takes effect on the earliest date that it may take effect under Article III, Section 39, of the Texas Constitution.

ARTICLE 6

SECTION 6.1. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Amendment - Stiles

Amend S.B. 772 as follows:

(1) Amend Article 5 by adding new SECTIONS 5.2 and 5.3 to read as follows:

SECTION 5.2. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. Restrictions on Personal Property Tax Lien. A tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business and Commerce Code [bona fide purchaser] for value who does not have actual notice of the existence of the lien or, if the property is a manufactured home, who does not have constructive notice of the existence of the lien.

SECTION 5.3. Section 33.01(c), Tax Code, is amended to read as follows:

(c) A delinquent tax accrues interest at a rate of one percent for each month or portion of a month the tax remains unpaid. Interest payable under this section is to compensate the taxing unit for revenue lost because of the delinquency.

(2) And renumber the subsequent sections accordingly.

Amendment - Haggerty

Amend S.B. 772 by adding a new section of the bill to Article 2 of the bill, to be numbered appropriately, to read as follows:

SECTION _____. Chapter 25, Tax Code, is amended by adding Section 25.194 to read as follows:

Sec. 25.194. CONTRACT FOR DEED; NOTICE OF APPRAISED VALUE. (a) A seller of property who is under a contract for deed to a buyer and who has not informed the appraisal district for the county in which the property is located of the buyer's name and address shall forward the notice of appraised value received from the appraisal district under Section 25.19, Tax Code, to the buyer not later than the 10th day after the date on which the seller receives the notice.

(b) A seller who does not forward the notice of appraised value as provided by Subsection (a) commits an offense.

(c) An offense under Subsection (b) is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000.

Amendment - Craddick

Amend S.B. 772 as follows:

(1) Amend Article 5 by adding a new SECTION 5.4 to read as follows:

SECTION 5.4. Section 33.05, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The collector for a taxing unit shall cancel and remove from the delinquent tax roll a tax on real property that has been delinquent for more than 20 years or a tax on personal property that has been delinquent for more than 10 years if there is no pending litigation concerning the delinquent taxes at the time of the cancellation and removal.

(2) And renumber the subsequent sections accordingly.

Amendment - Grusendorf

Amend S.B. 772 by inserting the following as a new article of the bill, appropriately numbered, and renumbering the subsequent articles and sections of articles appropriately:

ARTICLE ____

SECTION ____. Section 6.42, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) An office of an appraisal review board or of a member of an appraisal review board may not be located in the same building in which an office of an appraisal district is located without specific authorization from each taxing unit that is entitled to vote on the appointment of appraisal district board members. This subsection applies to an appraisal district serving an area with a population of at least one million and in which the most populous city has a population of less than 450,000.

SECTION ____. This article applies only to a lease or other acquisition of office space made or renewed on or after the effective date of this article.

SECTION ____. This article takes effect January 1, 1992.

Amendment - Stiles

Amend S.B. 772 as follows:

Add the following new SECTION 5.1 and renumber the subsequent sections accordingly:

"SECTION 5.1. Section 31.075, Tax Code, is amended to read as follows:

Sec. 31.075. TAX RECEIPT. (a) At the request of a property owner or a property owner's agent, the collector for a taxing unit shall issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested, the tax rate for each of those tax years, and the amount of tax paid in each of those years. The receipt must describe the property in the manner prescribed by the State Property Tax Board.

(b) In any judicial proceeding, including a suit to collect delinquent taxes under Chapter 33, a tax receipt issued under this section that states that a tax has been paid constitutes prima facie evidence that the tax has been paid as stated by the receipt."

Amendment - Ogden

Amend S.B. 772 by adding SECTION ____ as follows and renumber accordingly:

SECTION 1. Section 11.42(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section and by Sections [Section] 11.421, 11.422, 11.434, and 11.435 [of this code], eligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

SECTION 2. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.422 to read as follows:

Sec. 11.422. QUALIFICATION OF A SCHOOL. (a) If the chief appraiser denies a timely filed application for an exemption under Section 11.21 for a school that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (d)(3) of that section on that date, the school is eligible for the exemption for the tax year if the school:

(1) satisfies the requirements of Section 11.21(d)(3) before the later of the following dates:

(A) July 1 of the year for which the exemption applies;

or

(B) the 30th day after the date the chief appraiser notifies the school of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) of this subsection, files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the school has complied with the requirements of Section 11.21(d)(3).

(b) If the chief appraiser cancels an exemption for a school under Section 11.21 of this code that was erroneously allowed in a tax year because the appraiser determines that the school did not satisfy the requirements of Section 11.21(d)(3) on January 1 of that year, the school is eligible for the exemption for that tax year if the school:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.21(d)(3) on or before the 30th day after the date the chief appraiser notifies the school of the cancellation; and

(3) in the time provided in Subdivision (2) of this subsection files with the chief appraiser a new completed application stating that the school has complied with the requirements of Section 11.21(d)(3).

SECTION 3. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.434 to read as follows:

Sec. 11.434. LATE APPLICATION FOR A SCHOOL EXEMPTION. (a) The chief appraiser shall accept or deny an application for an exemption under Section 11.21 after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the sixth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the school's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) An application may not be filed under this section after December 31, 1992.

SECTION 4. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.435 to read as follows:

Sec. 11.435. LATE APPLICATION FOR CHARITABLE ORGANIZATION EXEMPTION. (a) The chief appraiser shall accept and approve or deny an application for an exemption under Section 11.18(d)(2) after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the second year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the organization's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) The chief appraiser may grant an exemption for property pursuant to an application filed under this section only if the property otherwise qualified for the exemption under the law in effect on January 1 of the tax year for which the exemption is claimed.

(e) An application may not be filed under this section after December 31, 1991.

SECTION 5. Section 11.43(e), Tax Code, is amended to read as follows:

(e) Except as provided by Section 11.422, 11.431, [or] 11.433, 11.434, or 11.435 [of this code], if a person required to apply for an exemption in a given year fails to file timely a completed application form, the person [he] may not receive the exemption for that year.

SECTION 6. This Act takes effect September 1, 1991.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Johnson

Amend S.B. 772 on page 9, between lines 1 and 2, by inserting the following:

(1) Section 6.03, Tax Code, is amended by amending Subsections (c), (d), and (e) to read as follows:

(c) Members of the board of directors are appointed by vote of the governing bodies of the incorporated cities and towns, the school districts, the junior college districts, and, if entitled to vote, the conservation and reclamation districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships. Conservation and reclamation districts are not entitled to vote unless at least one conservation and reclamation district in the district delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year. On receipt of a request, the chief appraiser shall certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the district.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year or, for a junior college district, the total dollar amount of property taxes imposed by the junior college district in the preceding tax year in the county for which the appraisal district is established, by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit other than a junior college district that is entitled to vote, plus the total dollar amount of property taxes imposed for that year by the junior college district in the county for which the appraisal district was created, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The chief appraiser shall calculate the number of votes to which each taxing unit other than a conservation and reclamation district is entitled and shall deliver written notice to each of those units of its voting entitlement before October 1 of each odd-numbered year. The chief appraiser shall deliver the notice:

(1) to the county judge and each commissioner of the county served by the appraisal district;

(2) to the presiding officer of the governing body of each city or town participating in the appraisal district, to the city manager of each city or town having

a city manager, and to the city secretary or clerk, if there is one, of each city or town that does not have a city manager; [and]

(3) to the presiding officer of the governing body of each school district participating in the district and to the superintendent of each school district; and

(4) to the presiding officer of the governing body of each junior college district.

SECTION 2. Section 6.031, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) In an appraisal district in which a junior college district participates, a change in the method or procedure for appointing board members adopted under Subsection (b) and in effect on September 1, 1991, may be rescinded by resolution adopted by the governing body of the junior college district and filed before January 1, 1992, with the chief appraiser of the appraisal district. A resolution filed with the chief appraiser before September 10, 1991, is effective immediately and applies to the appointment of board members in 1991. A resolution filed on or after September 10, 1991, and before January 1, 1992, takes effect January 1, 1992, and applies only to the appointment of board members on or after that date. If a rescission resolution is filed under this subsection, the chief appraiser shall immediately notify the presiding officer of the governing body of each taxing unit entitled to vote on the appointment of board members that the rescission has occurred. A change that is rescinded under this subsection may be readopted under Subsection (b) in the manner provided by this section. This subsection expires January 1, 1994.

Amendment on Third Reading - Kuempel

Amend S.B. 772 on third reading as follows: Add a new section to read as follows, and number appropriately:

SECTION _____. Section 31.01, Tax Code, is amended by adding subsection (j) to read as follows:

(j) If a tax bill is mailed under subsection (a) to a mortgagee of a property, the mortgagee shall mail a copy of the bill to the owner of the property not more than thirty days following the mortgagee's receipt of the bill.

Amendment on Third Reading - Glossbrenner

Amend S.B. 772 on third reading by adding a new SECTION _____ to read as follows and renumbering subsequent sections accordingly:

"SECTION _____. Section 312.002, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A tax abatement agreement entered into by a school district prior to September 1, 1991, applies to taxes collected by both the school district and the county education district."

Amendment on Third Reading - Patterson

Amend S.B. 772 on third reading by inserting a new article, appropriately numbered, to read as follows and renumber the remaining articles accordingly:

ARTICLE _____

SECTION _____. Subchapter A, Chapter 33, Tax Code, is amended by adding Section 33.012 to read as follows:

Sec. 33.012. NEGOTIATION OF PENALTIES AND INTEREST AFTER BANKRUPTCY: If property reverts to a mortgagee or other lien holder pursuant to bankruptcy proceedings, a taxing unit after negotiations with the mortgagee or lien holder may waive in whole or part penalties or interest incurred before the property reverted to the mortgagee or lien holder.

SECTION _____. This Article takes effect September 1, 1991.

Amendment on Third Reading - Patterson

Amend S.B. 772 on third reading by inserting a new article, appropriately numbered, to read as follows and renumber the remaining articles accordingly:

ARTICLE _____

SECTION _____. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.22 to read as follows:

Sec. 23.22. SUBDIVIDED LAND. (a) An appraisal district may not list a parcel of land separately in the appraisal records unless a subdivision plat indicating the separate parcel has been recorded in the county deed records.

(b) Subsection (a) does not apply to property listed separately in the appraisal records of an appraisal district before January 1, 1992.

SECTION _____. This Article takes effect January 1, 1992.

Floor Amendment on Third Reading - Oliveira

Amend S.B. 772 on third reading as follows:

(1) Add the following appropriately numbered sections:

SECTION _____. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.30 to read as follows:

Sec. 11.30. PROPERTY IN ENTERPRISE ZONE. (a) In this section, "enterprise zone goods" means property that under Article VIII, Section 1-k, of the Texas Constitution is exempted from ad valorem taxation by a county, junior college district, or municipality, including a home-rule municipality, and that is:

(1) transported from outside the state into the state in an enterprise zone or acquired by the property owner in the state in an enterprise zone to be transported outside the state, whether the intention to transport the property outside the state is formed or the destination to which the property is transported is specified when the property is acquired or the transportation into the state in an enterprise zone begins;

(2) detained in the state in an enterprise zone for assembling, storing, manufacturing, repair, maintenance, processing, or fabricating purposes;

(3) not located or retained in the state in an enterprise zone for longer than 175 days; and

(4) under the continuous ownership of the person who transports the property out of the state from the time the property is acquired by that person for transportation out of the enterprise zone.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's inventory or property consisting of enterprise zone goods.

(c) The exemption provided by Subsection (b) of this section is subtracted from the market value of the inventory or property determined under Section 23.12 of this code to determine the taxable value of the inventory or property.

(d) Except as provided by Subsections (f) and (g) of this section, the chief appraiser shall determine the appraised value of enterprise zone goods under this subsection. The chief appraiser shall determine the percentage of the market value of inventory or property owned by the property owner in the preceding calendar year in the area constituting the enterprise zone that was contributed by enterprise zone goods. The chief appraiser shall apply that percentage to the market value of the property owner's inventory or property for the current year in the enterprise zone to determine the appraised value of enterprise zone goods for the current year.

(e) In determining the market value of enterprise zone goods that in the preceding year were assembled, manufactured, repaired, maintained, processed, or

fabricated in the enterprise zone, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the enterprise zone goods but were not themselves enterprise zone goods or that were not transported outside the zone before the expiration of 175 days after they were brought into the zone by the property owner or acquired by the property owner in the zone. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held in the zone by the property owner during the preceding year in determining whether the component parts were transported out of the zone before the expiration of 175 days.

(f) If the property owner was not engaged in transporting enterprise zone goods out of the zone for the entire preceding year, the chief appraiser shall calculate the percentage of cost described in Subsection (d) of this section for the portion of the year in which the property owner was engaged in transporting enterprise zone goods out of the zone.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) of this section significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) of this section in the current year, the chief appraiser shall determine the market value of the enterprise zone goods to be exempt by determining, according to the property owner's records and any other available information, the market value of those enterprise zone goods owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the enterprise zone goods but were not themselves enterprise zone goods or that were not transported outside the enterprise zone before the expiration of 175 days after they were brought into the enterprise zone by the property owner or acquired by the property owner in the enterprise zone.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of inventory or property records in order to determine the amount and value of enterprise zone goods. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(i) The exemption provided by Subsection (b) of this section does not apply to a taxing unit that does not take action to exempt the property under Article VIII, Section 1-k, Subsection (b), of the Texas Constitution.

SECTION _____. (a) Except as provided by Subsection (b) of this section, section _____ takes effect on January 1, 1992, and applies to ad valorem taxes levied for the 1992 tax year.

(b) This Act takes effect only if the constitutional amendment authorizing the exemption from ad valorem taxes of personal property that is assembled, stored, repaired, maintained, manufactured, processed, or fabricated in an enterprise zone and subsequently transported outside the zone is approved by the voters at an election held on November 5, 1991; otherwise, this Act has no effect.

(2) Strike Section 49 and substitute the following:

Section _____. Except as provided by subsections (b) and (c) of this section, Sections 1 through 48 of this act take effect September 1, 1991.

(b) Section 6 of this Act takes effect immediately.

(c) Sections 36 through 48 of this Act take effect January 1, 1992.

Amendment on Third Reading - Evans

Amend S.B. 772 on third reading by inserting the following for SECTION 1.3 and renumbering the subsequent sections accordingly:

SECTION 1.3. Section 23.01, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A comparable sale of residential real property to be used for appraisal may not be located more than one-half mile from the residential real property of the appraisal in counties or within cities of 150,000 or more inhabitants.

SECTION 2. This Act takes effect January 1, 1992.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Henderson moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 772 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Henderson, Chair; Armbrister, Turner, Parker, Harris of Dallas.

SENATE BILL 432 WITH HOUSE AMENDMENTS

Senator Green called S.B. 432 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Black

Amend S.B. 432 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation, composition, and functions of the Texas Real Estate Commission; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS REAL ESTATE COMMISSION

SECTION 1.01. Section 1(b), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate broker or salesman [agent] unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

SECTION 1.02. Section 3, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act:

(1) an attorney at law licensed in this state or in any other state;

(2) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;

(3) a public official in the conduct of his official duties;

(4) ~~a person conducting an auction under the authority of a license issued by this state;~~

~~[(5)]~~ a person acting under a court order or under the authority of a will or a written trust instrument;

(5) ~~[(6)]~~ a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;

(6) ~~[(7)]~~ an on-site manager of an apartment complex;

(7) ~~[(8)]~~ transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(8) ~~[(9)]~~ an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(9) ~~[(10)]~~ transactions involving the sale, lease, or transfer of cemetery lots; or

(10) ~~[(11)]~~ transactions involving the renting, leasing, or management of hotels or motels.

SECTION 1.03. Section 5, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsections (b)-(f), (h), (i), (k), (m), (n), and (p)-(s) and by adding Subsections (u)-(z) to read as follows:

(b)(1) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes). A state elected president, president-elect, vice-president, or secretary-treasurer, employee, or paid consultant of a Texas trade association in the real estate industry may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the state position classification salary schedule. A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the real estate industry may not be a ~~member of the~~ commission member [or an] and may not be a commission employee who is [of the commission] exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the state position classification salary schedule. For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined statewide association of business or professional competitors in this state [that is] designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their [the] common interest [of its members].

(2) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(c) Appointments to the commission shall be made without regard to the race, color, handicap ~~[creed]~~, sex, religion, age, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years immediately [next] preceding their appointments. Three members must be representatives of the general public. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the ~~field of~~ real estate industry ~~brokerage~~;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(d) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (c) of this section for appointment to the commission;

(2) does not maintain during ~~the member's~~ service on the commission the qualifications required by Subsection (c) of this section ~~for appointment to the commission~~;

(3) violates a prohibition established by Subsection (b) ~~or (i)~~ of this section;

(4) ~~cannot~~ ~~is unable to~~ discharge the member's duties for a substantial part of the term for which the member is ~~was~~ appointed because of illness or disability; or

(5) is absent from more than half ~~one-half~~ of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, unless ~~except when~~ the absence is excused by majority vote of the commission.

(e) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a ~~member of the~~ commission member existed.

(f) If the administrator has knowledge that a potential ground for removal exists, the administrator shall notify the chairman of the commission of the ground. The chairman ~~of the commission~~ shall then notify the governor that a potential ground for removal exists.

(h) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. ~~[If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements.]~~ In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(i) The commission is empowered to select and name an administrator~~;~~ ~~who shall also act as executive secretary;~~ and to select and employ such other

subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill. The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. ~~[A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission or serve as a member of the commission. The administrator shall develop a system under which the job performance of commission employees is evaluated annually.]~~ The administrator or the administrator's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection. The administrator or the administrator's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(k) Except as provided in Subsections (l) and (m) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise. The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The [form of the] annual report must be in the form and reported in the time [and the reporting time are as] provided by [in] the General Appropriations Act.

(m) Fifteen dollars received by the commission for a renewal of a broker license before the expiration of the license or before the first anniversary of the date the license expired [from fees received from real estate brokers] and \$7.50 received by the commission for a renewal of a salesman license before the expiration of the license or before the first anniversary of the date the license expired [from fees received from real estate salesmen for licensure status] shall be transmitted annually to Texas A&M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center. However, all money expended from the separate account shall be as determined by legislative appropriation.

(n) The Texas Real Estate Commission is subject to ~~[the Texas Sunset Act]~~ Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter ~~[Act]~~, the commission is abolished and this Act expires September 1, 2003 ~~[1997]~~.

(p) The commission shall develop and implement ~~adopt~~ policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(q) A broker or salesman licensed under this Act shall notify consumers and service recipients of the name, mailing address, and the telephone number of the commission for the purpose of directing complaints to the commission. The notification may be provided:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(2) in a bill or receipt for service provided by a broker or salesman;

(3) on a brochure distributed by a broker or salesman; or

(4) on a sign, which may contain other notices to consumers and service recipients required by this Act, prominently displayed in the place of business of a salesman or broker [The commission by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission].

(r) The commission shall prepare information of public interest describing the functions of the commission and ~~describing~~ the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(s) The commission shall develop and implement ~~adopt~~ policies that clearly define the respective responsibilities of the governing body of the commission and the staff of the commission.

(u) The administrator or the administrator's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(v) A policy statement prepared under Subsection (u) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(w) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (v). The report may be made separately or as a part of other biennial reports made to the legislature.

(x) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(y) The commission shall prepare and maintain a written plan that describes how a person who does not speak English, or who has a physical, mental, or developmental disability can be provided reasonable access to the commission's programs.

(z) The commission may not adopt rules restricting competitive bidding or advertising by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by the person. The commission may not include

in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person;

or

- (4) restricts the person's advertisement under a trade name.

SECTION 1.04. Section 7, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (i) to read as follows:

(a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for a real estate license fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement must be satisfied not later than six months after the date on which the application for a license is filed. Courses of study required for a license ~~may~~ [shall] include but ~~are~~ not [be] limited to the following, which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, real estate mathematics, and at least three classroom hours of instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages,

interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(i) Not later than the 30th day after the date on which a licensing examination is administered under this Act, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails a licensing examination administered under this Act, the commission shall furnish the person with an analysis of the person's performance on the examination [Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination].

SECTION 1.05. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) On or before September 30, 1991, the commission shall:

(1) identify each real estate broker that:

(A) has been licensed as a real estate broker under this Act for at least 10 years as of September 1, 1991, and holds a license as a real estate broker on that date; and

(B) designates a place of real estate brokerage business at the time of passage of the legislation located in a county with a population of 225,000 or less, according to the 1980 federal decennial census; and

(2) send a written notice to each real estate broker identified under Subdivision (1) of this subsection stating that the real estate broker may opt out of the continuing education requirements required by this Act in accordance with Subsection (f) of this section.

(f) Notwithstanding any other provision of this Act, a real estate broker identified and receiving a notice under Subsection (e) of this section is not required to comply with the continuing education requirements of this section to renew the real estate broker's license if on or before October 30, 1991, the real estate broker:

(1) notifies the commission in writing that the real estate broker is opting out of those requirements; and

(2) pays a one-time fee to the commission in the amount of \$500.

(g) A special account is created in the general revenue fund to be known as the continuing education account. The account may be used only by the commission to pay the costs incurred in the administration of this section. Fees collected by the commission under Subsection (f) of this section shall be deposited in the special account.

SECTION 1.06. Section 8, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (q) to read as follows:

(q) A broker or salesman licensed under this Act shall notify consumers and service recipients of the availability of the real estate recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided:

(1) on a written contract for the services of a broker or salesman;

(2) on a brochure distributed by a broker or salesman;

(3) on a sign prominently displayed in the place of business of a salesman or broker; or

(4) in a bill or receipt for service provided by a broker or salesman.

SECTION 1.07. Section 9, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The commission shall require in any application for renewal of a broker or salesman license the applicant to disclose whether the applicant has entered a plea of guilty or nolo contendere to, been found guilty of, or been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction or suspending the imposition of sentence.

SECTION 1.08. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 13A to read as follows:

Sec. 13A. (a) A real estate broker who holds a license issued under this Act and who is not acting as a broker or sponsoring a salesman may apply to the commission in writing to be placed on the inactive status list maintained by the commission. The broker must apply for inactive status before the expiration of the broker's license. The broker shall terminate the broker's association with any salesmen sponsored by the broker by giving written notice to the salesmen before the 30th day before the date the broker applies for inactive status. A person on inactive status under this section is required to pay the annual renewal fees.

(b) A person on inactive status under this section may not perform any activities regulated under this Act.

(c) A person may retain inactive status under this section for a period not to exceed 24 consecutive months during any one 48-month period. If a person is on inactive status for more than 24 months, the person is not entitled to reenter active practice as provided by Subsection (d) of this section.

(d) If a person on inactive status desires to reenter active practice as a real estate broker, the person shall notify the commission in writing. The commission shall remove the person from the inactive status list on application and on compliance with the educational requirements of Section 7A of this Act.

SECTION 1.09. Section 15, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The commission may, on its own motion, and shall, on the signed [verified] complaint in writing of a consumer or service recipient [any person], provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate

the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence;

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license;

(3) the licensee, when selling, buying, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action;

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records;

(5) the licensee has disregarded or violated a provision of this Act;

(6) the licensee, while performing an act constituting an act of a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase;

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise;

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise;

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties;

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds;

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or in any other state for compensation for services as a real estate agent;

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice;

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice;

(J) acting in the dual capacity of broker and undisclosed principal in a transaction;

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property;

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent;

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract;

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker;

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent;

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent;

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular;

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action;

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act;

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance;

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness;

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license;

(X) disregarding or violating a provision of this Act;

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry, including directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee;

(7) the licensee has failed or refused on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the commission [Real Estate Commission] or its authorized personnel or representative;

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession.

(d) The commission may not investigate under this section a complaint submitted more than four years after the date of the incident involving a real estate broker or salesman that is the subject of the complaint.

SECTION 1.10. Section 15B, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15B. (a) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a signed [verified] written complaint from a consumer or service recipient. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise.

(b) In addition to any other authority granted by this Act, the commission may revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee ~~[suspend or revoke a license or reprimand or place on probation a licensee]~~ for a violation of this Act or a rule of the commission.

(c) [(b)] The commission may, upon majority vote, rule that an order revoking, cancelling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

(d) [(c)] If a license suspension or revocation is probated, the commission may require the licensee:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the area prescribed by the commission; or

(3) to continue to renew professional education until the licensee attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

SECTION 1.11. Section 15C, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by Chapter 1171, Acts of the 71st Legislature, Regular Session, 1989, is renumbered as Section 15E and amended to read as follows:

Sec. 15E ~~[(15C)]~~. Notwithstanding any other provision of this Act or any other law, a licensee shall have no duty to inquire about, make a disclosure related to, or release information related to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service ~~[except that a person who has actual knowledge that the previous or current occupant of real property had or has AIDS, HIV-related illnesses, or HIV infection shall provide that information to a potential purchaser or lessee of the real property on receiving a specific request for the information from the potential purchaser or lessee].~~

SECTION 1.12. Sections 16(b), (d), and (e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Notwithstanding the provisions of this Act or any other law, the completion of contract forms which bind the sale, exchange, option, lease, or rental of any

interest in real property by a real estate broker or salesman incident to the performance of the acts of a broker as defined by this article does not constitute the unauthorized or illegal practice of law in this state, provided the forms have been promulgated for use by the commission [~~Texas Real Estate Commission~~] for the particular kind of transaction involved, or the forms have been prepared by an attorney at law licensed by this state and approved by said attorney for the particular kind of transaction involved, or the forms have been prepared by the property owner or prepared by an attorney and required by the property owner.

(d) The Texas Real Estate Broker-Lawyer Committee shall have 12 members including six members appointed by the commission [~~Texas Real Estate Commission~~] and six members of the State Bar of Texas appointed by the President of the State Bar of Texas. The members of the committee shall hold office for staggered terms of six years with the terms of two commission appointees and two State Bar appointees expiring every two years. Each member shall hold office until his successor is appointed. A vacancy for any cause shall be filled for the expired term by the agency making the original appointment. Appointments to the committee shall be made without regard to race, creed, sex, religion, or national origin.

(e) In the best interest of the public the commission may adopt rules and regulations requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the commission [~~Texas Real Estate Commission~~]; provided, however, that the commission [~~Texas Real Estate Commission~~] shall not prohibit a real estate broker or salesman from using a contract form or forms binding the sale, exchange, option, lease, or rental of any interest in real property which have been prepared by the property owner or prepared by an attorney and required by the property owner. For the purpose of this section, contract forms prepared by the Texas Real Estate Broker-Lawyer Committee appointed by the commission and the State Bar of Texas and promulgated by the commission prior to the effective date of this Act shall be deemed to have been prepared by the Texas Real Estate Broker-Lawyer Committee. The commission may suspend or revoke a license issued under the provisions of this article when it has determined that the licensee failed to use a contract form as required by the commission pursuant to this section.

SECTION 1.13. Section 17, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. (a) If the commission proposes to suspend or revoke a person's license or registration, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission [Before a license is suspended or revoked, the licensee is entitled to a public hearing]. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The hearing is governed by the procedures for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the stenographic notes on the payment to the commission of a fee of \$1.50 per page plus applicable sales tax and postage.

After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented].

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. [The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

[(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

[(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.]

SECTION 1.14. Section 18, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. [(a)] A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the hearing was held, and an appeal is governed by the procedures under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [within 30 days from the service of notice of the action of the commission.

[(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.

[(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

[(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final].

SECTION 1.15. Sections 18B(b) and (c), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve.

(c) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation authorized under Subsection (a) of Section 15B of this Act [If a written complaint is filed with the commission relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint].

ARTICLE 2. REAL ESTATE INSPECTORS

SECTION 2.01. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 23 to read as follows:

Sec. 23. REAL ESTATE INSPECTORS. (a) DEFINITIONS. In this section:

(1) "Apprentice inspector" means a person who is in training under the direct supervision of a real estate inspector or inspector-in-training to become qualified to perform real estate inspections.

(2) "Committee" means the Texas Real Estate Inspector Committee.

(3) "Core real estate inspection courses" means educational courses approved by the commission, including structural, electrical, mechanical, plumbing, roofing, and ethical courses of study.

(4) "Direct supervision" means the instruction and control by a real estate inspector or inspector-in-training licensed under this section who is:

(A) responsible for the actions of an individual performing a real estate inspection;

(B) available if and when needed to consult with or assist an individual performing a real estate inspection; and

(C) physically present at the time and place of the inspection.

(5) "Indirect supervision" means the instruction and control by a real estate inspector licensed under this section who is:

(A) responsible for the actions of an individual performing a real estate inspection; and

(B) available if and when needed to consult with or assist an individual performing a real estate inspection, but who is not required to be physically present at the time and place of the inspection.

(6) "Inspector-in-training" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection under the indirect supervision of a real estate inspector and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

(7) "License" means a real estate inspector license or an inspector-in-training license issued under this section.

(8) "Licensee" means a person holding a real estate inspector license or inspector-in-training license issued under this section.

(9) "Real estate inspection" means a written or oral opinion as to the condition of the improvements to real property, including structural items, equipment, and systems.

(10) "Real estate inspector" means a person who represents to the public that the person is trained and qualified to perform real estate inspections and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

(11) "Registered" means a person who holds a registration as an apprentice inspector issued under this section.

(b) TEXAS REAL ESTATE INSPECTOR COMMITTEE. (1) The Texas Real Estate Inspector Committee is created. In addition to other powers and duties delegated to it by the commission, the committee shall recommend:

(A) rules for the registration and licensing of apprentice inspectors, inspectors-in-training, and real estate inspectors in this state in accordance with this section;

(B) rules relating to the education and experience requirements for registration and licensing as an apprentice inspector, inspector-in-training, and real estate inspector;

(C) rules relating to the qualifying examination required for registration or licensing as an inspector under this section;

(D) rules establishing a code of professional conduct and ethics for an apprentice inspector, inspector-in-training, and real estate inspector;

(E) reasonable fees to implement this section, including an application fee for registration or licensing, an examination fee, a renewal fee for a registration or license, and any other fee required by law;

(F) rules relating to continuing education requirements for a registered or licensed inspector;

(G) rules relating to the standards of practice for a real estate inspection;

(H) rules relating to granting or denying an application for the registration of an apprentice inspector and licensing of an inspector-in-training and real estate inspector;

(I) the form and format for any applications and forms required under this section; and

(J) any other action by the commission as may provide a high degree of service and protection to the public when dealing with registered or licensed inspectors.

(2) The committee is composed of nine members appointed by the commission. The members of the committee hold office for staggered terms of six years, with the terms of three members expiring February 1 of each odd-numbered year. Each member holds office until the member's successor is appointed. Appointments to the committee shall be made without regard to the sex, race, color, age, handicap, religion, or national origin of the appointees. In the event of a vacancy during a term, the commission shall appoint a replacement who meets the qualifications for appointment under this subdivision to fill the unexpired part of the term. A member of the committee must be a licensed real estate inspector actively engaged in the practice of real estate inspecting at the time of appointment and must have been primarily engaged in the real estate inspection business for at least five years before the member's appointment. A member of the committee may not hold a real estate broker or salesman license. Each member of the committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act. The committee shall annually elect from their members a chairman, a vice-chairman, and secretary.

(3) The commission shall adopt procedural rules to be used by the committee in implementing its powers and duties.

(4) The committee is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) The committee shall meet semiannually and at the call of the commission. The committee may also meet at the call of a majority of its members.

(c) LICENSE OR REGISTRATION REQUIRED. (1) A person may not act or attempt to act as a real estate inspector in this state for buyer or seller of real property unless the person possesses a real estate inspector license issued under this section.

(2) A person may not act or attempt to act as a inspector-in-training in this state for a buyer or seller of real property unless the person possesses an inspector-in-training license issued under this section and is under the indirect supervision of a real estate inspector.

(3) A person may not act or attempt to act as an apprentice inspector in this state for a buyer or seller of real property unless the person is registered under this section and is under the direct supervision of a real estate inspector or inspector-in-training.

(d) ELIGIBILITY; APPLICATION. (1) To be eligible for registration as an apprentice inspector, an applicant must be an individual, a citizen of the United States or a lawfully admitted alien, and a resident of this state for at least 60 days immediately before the date of filing the application. The applicant must be sponsored by a real estate inspector licensed under this section. The applicant must be at least 18 years old.

(2) To be eligible for a license as an inspector-in-training, an applicant must have met the requirements and be registered as an apprentice inspector for at least three months and have performed at least 25 real estate inspections under direct supervision before filing an application. The applicant must satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competency. An applicant for an original inspector-in-training license must submit satisfactory evidence to the commission of successful completion of not less than 90 classroom hours of core real estate inspection courses. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section. The applicant must be sponsored by a real estate inspector licensed under this section.

(3) To be eligible for a license as a real estate inspector, an applicant must have met the requirements and have been registered as an apprentice inspector for at least three months and licensed as an inspector-in-training for at least 12 months and have performed at least 175 real estate inspections under indirect supervision before filing an application. An applicant for an original real estate inspector license must submit satisfactory evidence to the commission of successful completion of not less than 30 classroom hours of core real estate inspection courses and eight classroom hours related to the study of standards of professional practice and ethics related to the profession of real estate inspections. These classroom hours are in addition to those required for registration as an apprentice inspector or licensing as an inspector-in-training. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section.

(4) An applicant must file an application for registration or a license with the commission on forms prescribed by the commission.

(e) ISSUANCE OF REGISTRATION OR LICENSE. The commission shall issue an apprentice registration, an inspector-in-training license, or a real estate inspector license to an applicant who possesses the required qualifications, passes the appropriate examination, and pays the fee required by Subsection (o)(2) of this section.

(f) EXPIRATION OF REGISTRATION OR LICENSE; RENEWAL. (1) A registration or license issued under this section expires one year after the date it is issued.

(2) A person may renew an unexpired registration or license by paying to the commission before the expiration date of the registration or license the required renewal fee.

(3) If a person's registration or license has been expired for 90 days or less, the person may renew the registration or license by paying to the commission the required renewal fee and a fee that is one-half of the examination fee, if any, for the registration or license.

(4) If a person's registration or license has been expired for longer than 90 days but less than one year, the person may renew the registration or license by paying to the commission all unpaid renewal fees and a fee that is equal to the examination fee, if any, for the registration or license.

(5) If a person's registration or license has been expired for one year or longer, the person may not renew the registration or license. The person may obtain a new registration or license by submitting to reexamination, if originally required, and complying with the requirements and procedures for obtaining an original registration or license. However, the commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the one year preceding application. The person must pay to the commission a fee that is equal to the examination fee for the license.

(6) At least 30 days before the expiration of a person's registration or license, the commission shall send written notice of the impending registration or license expiration to the person at the person's last known address according to the records of the commission.

(g) CHANGE OF ADDRESS. A licensee or person registered under this section shall notify the commission and pay the required fee within 30 days after the date a change of place of business occurs.

(h) FEES. (1) The commission shall charge and collect reasonable and necessary fees to recover the cost of administering this section as follows:

(A) a fee not to exceed \$75 for the filing of an original application for registration as an apprentice inspector;

(B) a fee not to exceed \$125 for the filing of an original application for a license as an inspector-in-training;

(C) a fee not to exceed \$150 for the filing of an original application for a license as a real estate inspector;

(D) a fee not to exceed \$125 for the annual registration renewal of an apprentice inspector;

(E) a fee not to exceed \$175 for the annual license renewal of an inspector-in-training;

(F) a fee not to exceed \$200 for the annual license renewal of a real estate inspector;

(G) a fee not to exceed \$100 for taking a license examination; and

(H) a fee not to exceed \$20 for a request for a change of place of business or to replace a lost or destroyed license or registration.

(2) All fees may be paid by cash, check, cashier's check, or money order.

(3) The fees shall be reviewed annually and reduced to the extent that the costs of administering this section are funded by the real estate inspector regulation account established under Subsection (o)(4) of this section.

(i) EXAMINATION. (1) The commission shall prescribe the licensing examinations, which shall be prepared by or contracted for by the commission. A licensing examination shall evaluate competency in the subject matter of all required core real estate inspection courses. The licensing examination shall be offered not less often than once every two months in Austin. If a license applicant fails the examination, the applicant may apply for reexamination by filing a request with the commission and paying the examination fee. Each license applicant must satisfy the examination requirement not later than six months after the date on which the license application is filed. A license applicant who fails to satisfy the examination requirement within six months after the date on which the license application is filed must submit a new license application with the commission and pay the examination fee to be eligible for examination.

(2) Not later than the 30th day after the date on which a licensing examination is administered under this section, the commission shall notify each examinee of the results of the examination. However, if an examination is graded

or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(3) If requested in writing by a person who fails a licensing examination administered under this section, the commission shall furnish the person with an analysis of the person's performance on the examination.

(j) WAIVER FOR OUT-OF-STATE APPLICANTS. The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(k) CONTINUING EDUCATION PROGRAMS. The commission shall recognize, prepare, or administer continuing education programs for inspectors. Participation in the programs is mandatory. An inspector-in-training must submit satisfactory evidence to the commission of successful completion of at least four classroom hours of core real estate inspection courses annually before a license renewal is issued. A real estate inspector must submit satisfactory evidence to the commission of successful completion of at least eight classroom hours of core related real estate inspection courses annually before a license renewal is issued.

(l) PROHIBITED ACTS. A real estate inspector or inspector-in-training licensed under this section or an apprentice inspector registered under this section may not:

(1) accept an assignment for real estate inspection if the employment or fee is contingent on the reporting of a specific, predetermined condition of the improvements to real property or is contingent on the reporting of specific findings other than those known by the inspector to be facts at the time of accepting the assignment;

(2) act in a manner or engage in a practice that is dishonest or fraudulent or that involves deceit or misrepresentation;

(3) perform a real estate inspection in a negligent or incompetent manner;

(4) act in the dual capacity of real estate inspector and undisclosed principal in a transaction;

(5) act in the dual capacity of real estate inspector and real estate broker or salesman;

(6) perform or agree to perform any repairs or maintenance in connection with a real estate inspection pursuant to the provisions of any earnest money contract, lease agreement, or exchange of real estate; or

(7) violate the rules adopted by the commission or any provisions of this section.

(m) OFFENSES. (1) A person commits an offense if the person knowingly or intentionally engages in the business of real estate inspecting without a license or registration under this section or performs an inspection during a period in which the inspector's license or registration is revoked or suspended.

(2) An offense under this subsection is a Class B misdemeanor.

(3) The commission shall authorize the committee to conduct administrative hearings and recommend the entry of final orders in contested cases regarding a registered or licensed real estate inspector.

(4) The commission may investigate the actions of a registered or licensed real estate inspector and may, after notice and hearing in accordance with the provisions of Section 17 of this Act, suspend or revoke a registration or license for a violation of this Act or a rule of the commission. If the commission revokes a registration or license of a person, the person may not apply to the commission for one year after the revocation.

(n) EXEMPTIONS. This section does not apply to any electrician, plumber, carpenter, any person engaged in the business of structural pest control in compliance with the Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting such improvements. The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which the person is authorized to perform pursuant to a license issued by this state or any governmental subdivision of this state.

(o) REAL ESTATE INSPECTION RECOVERY FUND. (1) The commission shall establish a real estate inspection recovery fund, which shall be set apart and maintained by the commission as provided by this subsection. The fund shall be used in the manner provided by this subsection for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed or registered real estate inspector, provided the real estate inspector was licensed or registered by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the real estate inspector. The use of the fund is limited to an act that is a violation of Subsection (l) of this section.

(2) When a person receives notice that the person has successfully completed the licensing examination provided by Section (i) of this section, the person shall pay, in addition to any other fees required by this section, a fee not to exceed \$200, which shall be deposited in the real estate inspection recovery fund prior to the commission's issuing the person a real estate inspector license.

(3) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is less than \$300,000, each real estate inspector, on the next renewal of the person's license, shall pay, in addition to his license renewal fee, a fee of \$75, which shall be deposited in the real estate inspection recovery fund, or a pro rata share of the amount necessary to bring the fund to \$450,000, whichever is less.

(4) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is greater than \$600,000, the amount of money in excess of \$600,000 shall be transferred to a separate account in the general revenue fund to be known as the real estate inspector regulation account. The money in the real estate inspector regulation account may be used only for the payment of costs incurred by the commission in the regulation of real estate inspectors.

(5) No action for a judgment that results in an order for collection from the real estate inspection recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment that may result in collection from the real estate inspection recovery fund, the real estate inspector shall notify the commission in writing to this effect at the time of the commencement of the action.

(6) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate inspector, on the grounds described in Subdivision (1) of this subsection, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission and to the judgment debtor, may apply to the court where the judgment was rendered for an order directing payment out of the real estate inspection recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Subdivision (15) of this subsection.

(7) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show:

(A) that the judgment is based on facts allowing recovery under Subdivision (1) of this subsection;

(B) that the person is not a spouse of the debtor, or the personal representative of the spouse, and the person is not a real estate inspector, as defined by this section;

(C) that the person has obtained a judgment under Subdivision (6) of this subsection that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(D) that based on the best information available, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(E) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(8) The court shall make an order directed to the commission requiring payment out of the real estate inspection recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subdivision, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Subdivision (7) of this subsection and that the aggrieved person has satisfied all the requirements of Subdivisions (6) and (7) of this subsection. The commission may relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based. If the court finds that the aggregate of claims against a real estate inspector exceeds the limitations contained in this section, the court shall reduce proportionately the amount it finds payable on the claim.

(9) A recovery on the judgment against a single defendant made before payment from the real estate inspection recovery fund must be applied by the creditor first to actual damages.

(10) A license or registration granted under the provisions of this section may be revoked by the commission on proof that the commission has made a payment from the real estate inspection recovery fund of any amount toward satisfaction of a judgment against a licensed or registered real estate inspector. The commission may probate an order revoking a license or registration. No real estate inspector is eligible to receive a new license or registration until the person has repaid in full, plus interest at the current legal rate, the amount paid from the real estate inspection recovery fund on his account.

(11) The sums received by the commission for deposit in the real estate inspection recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate inspection fund. These funds may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the real estate inspection recovery fund. However, investments may not be made that will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this subsection.

(12) When the commission receives notice of entry of a final judgment, and a hearing is conducted under Subdivision (8) of this subsection, the commission may notify the attorney general of Texas of the commission's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate. In taking such action, the commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery under this subsection.

(13) When, on the order of the court, the commission has paid from the real estate inspection recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission. The amount paid by the commission shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount in interest recovered by the commission on the judgment shall be deposited to the fund.

(14) The failure of an aggrieved person to comply with the provisions of this subsection relating to the real estate inspection recovery fund shall constitute a waiver of any rights under this subsection.

(15) Notwithstanding any other provision, payments from the real estate inspection recovery fund are subject to the following conditions and limitations:

(A) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided by Subdivision (6) of this subsection, and in the manner prescribed by this subsection;

(B) payments for claims, including attorney's fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to \$7,500 regardless of the number of claimants; and

(C) payments for claims based on judgments against a licensed or registered real estate inspector may not exceed in the aggregate \$15,000 until the fund has been reimbursed by the licensee for all amounts paid.

(16) Nothing contained in this subsection shall limit the authority of the commission to take disciplinary action against a person licensed or registered under this section for a violation of this section or the rules of the commission, nor shall the repayment in full of all obligations to the real estate inspection recovery fund by a person nullify or modify the effect of any other disciplinary proceeding brought pursuant to this section.

(17) A person receiving payment out of the real estate inspection recovery fund under Subdivision (15) of this subsection shall be entitled to receive reasonable attorney's fees as determined by the court, subject to the limitations stated in that subdivision.

(18) A real estate inspector licensed or registered under this section shall notify consumers and service recipients of the availability of the real estate inspection recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided:

(A) on a written contract for the services of a real estate inspector;

(B) on a brochure distributed by a real estate inspector;

(C) on a sign prominently displayed in the place of business of a real estate inspector; or

(D) in a bill or receipt for service provided by a real estate inspector.

ARTICLE 3. REPEALER, TRANSITION, AND MISCELLANEOUS PROVISIONS

SECTION 3.01. Sections 18c and 21, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are repealed.

SECTION 3.02. (a) The change in law made by this Act in the qualifications of persons appointed to the Texas Real Estate Commission apply only to a member appointed on or after September 1, 1991.

(b) The first policy statement required to be filed under Section 5(v), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 3.03. (a) In making the initial appointments to the Texas Real Estate Inspector Committee established under Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, the Texas Real Estate Commission shall designate three members for terms expiring in 1993, three members for terms expiring in 1995, and three members for terms expiring in 1997.

(b) A person currently licensed as a real estate inspector on the effective date of this Act is eligible to obtain a license as a real estate inspector if the person:

(1) provides certification acceptable to the commission of having completed 75 real estate inspections in the 12 months before renewal of the real estate inspector's license;

(2) within 18 months submits satisfactory evidence to the commission of successful completion of 38 classroom hours of core real estate inspection courses in addition to those classroom hours required for an original license before the effective date of this Act; and

(3) before sponsoring an apprentice inspector or an inspector-in-training, provides certification acceptable to the commission of having performed at least 200 real estate inspections, having performed inspections as a licensed real estate inspector for at least 15 months, and having completed the requirements of Subdivision (2) of this subsection.

(c) If a person licensed as a real estate inspector on the effective date of this Act is unable to meet these requirements, a transitional license shall be issued for 12 months and may not be renewed. During the period the transitional license is effective and before issuance of a real estate inspector's license, the person must provide certification acceptable to the commission of having completed 75 real estate inspections.

(d) All qualifying inspections completed during the 12 months before renewal shall be counted toward the 75 inspections required under this section.

SECTION 3.04. This Act takes effect September 1, 1991.

SECTION 3.05. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - A. Smith

Amend C.S.S.B. 432 as follows:

(1) Strike the existing SECTION 1.05, beginning on page 16, line 1, and substitute the following:

SECTION 1.05. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (e), (f), and (g) to read as follows:

(a) To renew a real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the Commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust laws, the Deceptive Trade

Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The Commission, upon the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(e) On or before September 25, 1991, the commission shall:

(1) identify each real estate broker that:

(A) has been licensed under this Act for at least ten years as of September 1, 1991, and holds a license as a real estate broker on that date; and

(B) on the effective date of this Act has the principal place of real estate brokerage business, as designated on the real estate broker's license pursuant to Subsection(a) of section 12 of this Act, located in a county with a population of 225,000 or less, according to the 1980 federal decennial census; and

(2) send a written notice to each real estate broker identified under Subdivision (1) of this subsection stating that the real estate broker to opt out of the mandatory continuing education requirements required by this Act in accordance with Subsection (f) of this section if the real estate broker has held a broker's license for ten years or more and holds a broker's license on September 1, 1991.

(f) Notwithstanding any other provision of this Act, a real estate broker identified and receiving a notice under Subsection (e) of this section who has held a broker's license for ten years or more and holds a broker's license on September 1, 1991, is not required to comply with the mandatory continuing education requirements of this section to renew the real estate broker's license if after October 1, 1991, and on or before October 30, 1991, the real estate broker:

(1) notifies the commission in writing that the real estate broker is opting out of those requirements; and

(2) pays a one-time fee to the commission in the amount of \$500.

(g) A special account is created in the general revenue fund to be known as the mandatory continuing education and to pay the costs incurred in the administration of this section. Fees collected by the commission under Subsection (f) of this section shall be deposited in the special account.

(2) Renumber the succeeding sections appropriately.

Amendment - Carona

Amend the A. Smith amendment to C.S.S.B. 432 as follows:

(1) Strike the existing SECTION 1.05, beginning on page 16, line 1, and substitute the following:

SECTION 1.05. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (e), (f), and (g) to read as follows:

(a) To renew a real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the Commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The Commission, upon the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(2) Renumber the succeeding sections appropriately.

Amendment - Denton, Craddick

Amend C.S.S.B. 432 as follows:

Substitute the following for the Carona amendment to the A. Smith amendment to C.S.S.B. 432:

Strike the existing SECTION 1.05, beginning on page 16, line 1, and substitute the following:

SECTION 1.05. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) To renew a real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of relevant occupational or other educational experience or correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the Commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust

laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The Commission, upon the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(e) The commission shall exempt from continuing education requirements imposed under this Act real estate brokers who have been licensed for 10 years or more beginning September 1, 1991; 11 years or more beginning September 1, 1992; 12 years or more beginning September 1, 1993; 13 years or more beginning September 1, 1994; 14 years or more beginning September 1, 1995; and 15 years or more on or after September 1, 1996.

Amendment - Oakley

Amend C.S.B. 432 as follows:

(1) In SECTION 1.02 of the bill, in amended Subdivision (9), after the semicolon, strike "or" and substitute "[or]".

(2) In SECTION 1.02 of the bill, in amended Subdivision (10), between "motels" and the period, insert the following: ; or

(11) a tenant residing in a rental dwelling complex who receives a reduction in the tenant's rent or other non-cash consideration as compensation for referring a prospective tenant for occupancy in the complex if:

(A) the complex consists of two or more units owned by the same owner;

(B) the compensation is received by the tenant not later than two months after the date the prospective tenant begins occupancy at the complex; and

(C) the tenant's compensation is disclosed to the prospective tenant.

The amendments were read.

Senator Green moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 432 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Haley, Tejeda, Zaffirini.

SENATE BILL 958 WITH HOUSE AMENDMENT

Senator Green called S.B. 958 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Hartnett

Amend S.B. 958 as follows:

1) Strike Sections 3, 4, 5, 6, and 9, and renumber the remaining sections accordingly.

2) On page 8, line 24 (Section 10), strike "September 1, 1991" and insert "January 1, 1993".

The amendment was read.

Senator Green moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 958 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Glasgow, Whitmire, Dickson, Harris of Tarrant.

(President in Chair)

SENATE BILL 1566 WITH HOUSE AMENDMENT

Senator Truan called S.B. 1566 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Earley

Amend S.B. 1566 by adding in SECTION 1 of the bill in added Sec. 1 of Article 9, National Defense Impacted Region Assistance Act of 1985, after "related to the naval facility" by striking "or to" and substituting a comma and the following: "public works improvements of local governments, including waste water facilities and other improvements the need for which result from the impact of related naval facilities, assigned naval personnel, and support services, or".

The amendment was read.

Senator Truan moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1566 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Truan, Chair; Montford, Armbrister, Brooks, Barrientos.

CONFERENCE COMMITTEE ON HOUSE BILL 1126

Senator Turner called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1126 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1126 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Brooks, Armbrister, Bivins, Johnson.

SENATE RESOLUTION 862

Senator Montford offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on H.B. 1679 to consider and take action on the following specific matters:

1. Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (e) to SECTION 4 of the bill to read as follows:

(e) Notwithstanding other provisions of this section, Southwest Collegiate Institute for the Deaf and Texas State Technical Institute are not required to implement the electronic display service required by Sections 131.004(d) and 135.05(c), Education Code, as added by this Act, during the fiscal biennium beginning on September 1, 1991, unless funds are appropriated to each institution specifically to implement those sections.

Explanation: This change is necessary to avoid imposing on the specified institutions a duty to provide a service without providing the institutions with the financial assistance necessary to carry out the duty.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1664

Senator Bivins called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1664 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1664 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Sims, Brown, Krier, Lucio.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 1773**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1773** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
SIMS
CARRIKER
LUCIO

On the part of the Senate

OAKLEY
STILES
HIGHTOWER
SEIDLITS
KRIER

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Brooks in Chair)

HOUSE BILL 1373 ON THIRD READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

H.B. 1373, Relating to the authority of a water supply or sewer service corporation.

The bill was read third time.

Senator Green offered the following amendment to the bill:

Amend **H.B. 1373** as follows:

On page 1, line 40 add "This section shall only apply to a county with a population of less than 2 million."

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 1679**

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1679** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONTFORD
ZAFFIRINI
BROOKS
HALEY

On the part of the Senate

FRASER
ARNOLD
SCHOOLCRAFT
VON DOHLEN
TEJEDA

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 582**

Senator Dickson submitted the following Conference Committee Report:

Austin, Texas
May 23, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 582** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DICKSON
CARRIKER
WHITMIRE
MONCRIEF
TURNER

On the part of the Senate

HERNANDEZ
A. SMITH
GREENBERG
BRADY
BOSSE

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to a center for the support of a comprehensive database network to further the state's goal of economic diversification.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 88, Education Code, is amended by amending Sections 88.401 through 88.405 and 88.409 through 88.412 and adding Section 88.413 to read as follows:

Sec. 88.401. DEFINITIONS.

- (1) "Center" means the lead regional innovation center of TIINS.
- (2) "Board" means the board of directors of TIINS.
- (3) "Committee" means the advisory committee to TIINS.
- (4) "Regional centers" means any innovation center established by the board other than the lead regional innovation center.
- (5) "Headquarters" means the administrative headquarters of TIINS.
- (6) "Director" means the executive director of TIINS.

Sec. 88.402. ORGANIZATION. ~~[(a)]~~ TIINS shall be governed by a board of directors as outlined in the bylaws of the Texas Innovation Information Network System, a nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code of 1986, organized in the State of Texas as a public/private partnership.

Sec. 88.403. POWERS OF THE BOARD OF DIRECTORS. The powers of the board shall include but not be limited to the following:

- (1) to determine the scope of TIINS activities and to set policy guidelines;
- (2) to establish new regional innovation centers and to relocate existing centers as appropriate; and
- (3) to allocate resources and funds appropriated by the state for the purposes of this Act ~~[among existing regional innovation centers].~~

Sec. 88.404. ADVISORY COMMITTEE. (a) The TIINS Advisory Committee is established to advise and make recommendations to the director and the board on the operations and activities of TIINS.

(b) ~~The [initial committee is composed of individuals who served as advisory committee members immediately prior to the effective date of this Act.~~

~~[(c) In addition, the] committee includes the chairman of the House Science and Technology Committee or his designee and a designee of the lieutenant governor. Committee members will be selected from state agencies, the private sector, colleges, universities, community colleges, and technical institutes. The director, in consultation with the board, may appoint additional committee members at any time.~~

~~[(c)][(d)] The committee members serve terms of two years and all [except that three members of the initial committee serve only one year. The terms of office for the initial committee commence on the effective date of this Act. All] committee members are eligible for reappointment to consecutive terms.~~

~~[(d)][(e)] When the term of office of a committee member expires or a vacancy occurs on the committee, the board may appoint [members of the committee shall elect] a successor based on the current requirements of TIINS [to the position: Election to the committee requires a majority vote of all of the members of the committee. Each member of the committee serves until his successor has been elected].~~

Sec. 88.405. GOALS AND OBJECTIVES ~~[AND DUTIES]~~ OF ~~[THE]~~ TIINS. (a) The objectives ~~[and duties]~~ of TIINS are as follows:

(1) to establish and operate a database and information service which provides in a timely and efficient manner:

- (A) access to current scientific information;
 - (B) access to Texas research centers at educational institutions and in the private sector;
 - (C) access to scientific and engineering capabilities;
 - ~~[(D)][(E)]~~ access to advanced technology company products, services, capabilities, and needs;
 - ~~[(E)][(F)]~~ access to the services of professional groups;
- ~~[and]~~

(F)(E) access to vocational continuing [education] and professional education and training programs; and

(G) access to public sources of assistance to businesses;

(2) to increase the number of innovations occurring in Texas;

(3) to improve university and industry interactions;

(4) to reduce the average time it takes for innovations to be commercialized; and

(5) to improve the state's research competitiveness; and

(6) to develop and maintain a database, as resources allow, of licensable technologies and intellectual property rights by working with Texas universities and companies.

(b) In accomplishing its goals and objectives TIINS will coordinate with the Texas Department of Commerce Product Development Fund activities and with other databases and technology development efforts in the state to better enable Texas to compete in the global economy.

Sec. 88.409. ~~[INITIAL]~~ REGIONAL INNOVATION CENTERS. The TIINS board of directors may establish regional innovation centers for the purpose of providing greater access to TIINS information products and services.

Regional ~~[The initial regional]~~ innovation centers are currently ~~[shall be]~~ located at:

(1) Texas Tech University at Lubbock;

(2) The ~~[North Texas Commission;~~

~~[(3) Gulf Coast]~~ Small Business Development Center at the University of [in] Houston;

~~(3)(4)~~ the Technology Business Development Division of the Texas Engineering Experiment Station in College Station;

(4) the Institute for Studies in Business/The ~~[(5) Texas Research and Technology Foundation/The]~~ University of Texas at San Antonio;

(5) the Technology Business Incubator affiliated with ~~[(6)]~~ The University of Texas at Austin;

~~(6)(7)]~~ The University of Texas at Tyler;

~~(7)(8) Corpus Christi State University at Corpus Christi; and~~

~~[(9)]~~ The University of Texas at El Paso;

(8) Texas State Technical Institute System; and

(9) the Automation and Robotics Research Center at The University of Texas at Arlington.

Sec. 88.410. REPORTS. (a) The regional centers and headquarters shall submit annual reports to the center. The reports shall contain the following information:

(1) the number of records in ~~[on]~~ the TIINS database;

(2) the percentage annual growth in the database;

(3) the number of inquiries to the database;

(4) the changes and improvements in system design and a description of TIINS products and services;

(5) the amount of public and private nonstate financial and in-kind support received by TIINS ~~[the regional centers]; and~~

(6) examples, as available, of successful public-private partnerships resulting from use of TIINS' products and services.

(b) The center shall compile the information received from TIINS headquarters and the regional centers and submit a report to the Texas Engineering Experiment Station which shall be included in the experiment station's annual report to the state. The center shall include in its report those items enumerated in Subdivisions (1) through (5) of Subsection (a) of this section.

Sec. 88.411. FEES. The board may charge fees for the services provided by TIINS through the center, any regional center, or the headquarters to any user of [the] TIINS products and services [system].

Sec. 88.412. FUNDING. The Texas Innovation Information Network System shall be supported by fees for services provided to both public and private users [legislature is authorized to appropriate not more than \$250,000 per year for two years to the Texas Engineering Experiment Station for the development of TIINS. After this development period, the Texas Innovation Information Network System shall be supported by fees for services provided to both public and private users].

Sec. 88.413. APPLICATION OF SUNSET ACT. TIINS is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, TIINS is abolished and this Act expires September 1, 1999.

SECTION 2. Section 2, Chapter 675, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 123 WITH HOUSE AMENDMENT

Senator Carriker called S.B. 123 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Danburg

Amend S.B. 123 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to write-in candidacy in certain elections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 146, Election Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. WRITE-IN CANDIDATE IN CITY ELECTION

Sec. 146.051. CANDIDATE'S NAME REQUIRED TO APPEAR ON LIST. In a general election for city officers, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

Sec. 146.052. DECLARATION OF WRITE-IN CANDIDACY REQUIRED. To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

Sec. 146.053. AUTHORITY WITH WHOM DECLARATION FILED. A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

Sec. 146.054. FILING DEADLINE. A declaration of write-in candidacy must be filed not later than 5 p.m. of the 30th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 33rd day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 27th day before election day.

Sec. 146.055. APPLICABILITY OF OTHER CODE PROVISIONS.
Subchapter B applies to write-in voting in a general election for city officers except to the extent of a conflict with this subchapter.

SECTION 2. Section 162.015, Election Code, is amended to read as follows:

Sec. 162.015. RESTRICTIONS ON CANDIDACY IN GENERAL ELECTION BY [BALLOT POSITION FOR] CANDIDATE OR VOTER IN PRIMARY. (a) A person who voted at a primary election or who was a candidate for nomination in a primary is ineligible for a place on the ballot for the succeeding general election for state and county officers as:

(1) an independent candidate for an office for which a candidate was nominated in the primary; or

(2) the nominee of a political party other than the party holding the primary in which the person voted or was a candidate.

(b) A person who was a candidate for nomination in a primary election is ineligible for a place on the list of write-in candidates for the succeeding general election for state and county officers as a write-in candidate for the office sought by that candidate in the primary.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to S.B. 123 by a viva voce vote.

SENATE BILL 383 WITH HOUSE AMENDMENTS

Senator Carriker called S.B. 383 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Black

Amend S.B. 383 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to consolidating the functions of the Commission on Fire Protection Personnel Standards and Education and the Fire Department Emergency Board, together with certain new powers and duties, into a newly created Texas Commission on Fire Protection; transferring certain duties related to fire protection, including oversight of the state fire marshal, from the State Board of Insurance to the Texas Commission on Fire Protection; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Government Code, is amended by adding the chapter heading and Subchapter A of Chapter 419 to read as follows:

CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 419.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Fire Protection.

(2) "Volunteer fire fighter" and "volunteer fire chief" do not include a person who is also employed full-time in the fire service.

Sec. 419.002. COMMISSION. The Texas Commission on Fire Protection is an agency of the state.

Sec. 419.003. APPLICATION OF SUNSET ACT. The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires December 31, 1991. The abolition date prescribed by this section does not require the Sunset Advisory Commission to conduct any review or prepare any report other than the review undertaken before the convening of the 72nd Legislature, Regular Session, 1991, or the report submitted to that legislature.

Sec. 419.004. COMPOSITION OF COMMISSION. (a) The commission is composed of the following 12 members:

(1) three chief officers with a minimum rank of battalion chief employed in fire departments as defined by Section 419.021 that are under the jurisdiction of the commission, at least two of whom must be the heads of their fire departments, and one of whom must be employed by a political subdivision with a population of less than 50,000, one must be employed by a political subdivision with a population of 50,000 to 200,000, and one must be employed by a political subdivision with a population of more than 200,000;

(2) three fire protection personnel as defined by Section 419.021 with the rank of captain or below employed in fire departments or other appropriate local authorities under the jurisdiction of the commission, one of whom must be employed by a political subdivision with a population of less than 50,000, one must be employed by a political subdivision with a population of 50,000 to 200,000, and one must be employed by a political subdivision with a population of more than 200,000;

(3) three persons who are volunteer fire chiefs or volunteer fire fighters;

(4) one certified fire protection engineer;

(5) one certified arson investigator; and

(6) one fire science instructor from an institution of higher education as defined by Section 61.003, Education Code.

(b) The members of the commission are appointed by the governor with the advice and consent of the senate for staggered terms of six years with four members' terms expiring February 1 of each odd-numbered year.

(c) The duties of a public officer or employee on the commission constitute additional duties of the member's office or employment.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 419.005. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 419.004;

(2) does not maintain during service on the commission the qualifications required by Section 419.004;

(3) violates a prohibition established by Section 419.006;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of

the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 419.006. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of fire protection may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of fire protection may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 419.007. OFFICERS; COMPENSATION; MEETINGS. (a) The fire science instructor appointed under Section 419.004(a)(6) serves as the presiding officer of the commission unless the governor designates another member as presiding officer. The commission shall elect from among its members an assistant presiding officer and a secretary.

(b) The commission shall meet at least quarterly.

(c) A member of the commission may not receive compensation for service on the commission. A member is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the commission.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 419.008. GENERAL POWERS AND DUTIES. (a) The commission may adopt rules for its internal management and control and for the administration of its powers and duties.

(b) The commission shall perform the duties assigned to the commission under this chapter or other law.

(c) The commission shall perform duties assigned by law to the Commission on Fire Protection Personnel Standards and Education or to the Fire Department Emergency Board.

(d) The commission shall provide for the appointment and supervision of the state fire marshal in accordance with Chapter 417.

(e) The commission may accept gifts, grants, and contributions from private individuals or foundations and from the federal government.

(f) The commission shall report to the governor annually and to the legislature at each regular session on the commission's activities. The commission may make recommendations in those reports on matters under its jurisdiction. The commission may make other reports in its discretion.

(g) The commission may make or encourage studies of fire protection, including fire administration.

(h) The commission may conduct research to improve fire protection and fire administration and may stimulate research by public and private agencies for that purpose.

(i) The commission may, on the request of a public or nonprofit entity with duties related to fire protection, advise or assist the entity in relation to those duties.

(j) The commission may appoint advisory committees to assist it in the performance of its duties. A member of an advisory committee appointed by the commission or otherwise appointed under this chapter may not receive compensation for service on the advisory committee. A member appointed under this chapter is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the advisory committee.

Sec. 419.009. PERSONNEL. (a) The commission shall employ an executive director who shall employ other personnel necessary for the performance of commission functions.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(d) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(g) A policy statement prepared under Subsection (f) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 419.010. FISCAL REPORT. The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 419.011. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve. If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the commission's programs.

[Sections 419.012-419.020 reserved for expansion]

SECTION 2. Chapter 416, Government Code, is transferred to Subtitle B, Title 4, Government Code, redesignated as Subchapter B of Chapter 419, and amended to read as follows:

[CHAPTER 416. COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION]

SUBCHAPTER B [A]. REGULATING AND ASSISTING FULLY PAID LOCAL

FIRE PROTECTION PERSONNEL AND LOCAL FIRE DEPARTMENTS

[GENERAL PROVISIONS]

Sec. 419.021 ~~[416.001]~~. DEFINITIONS. In this subchapter ~~[chapter]~~:

(1) "Aircraft crash and rescue fire protection personnel" means permanent, fully paid, full-time local governmental employees who, as a permanent duty assignment, fight aircraft fires at airports, stand by for potential crash landings, and perform aircraft crash rescue.

(2) ~~["Commission" means the Commission on Fire Protection Personnel Standards and Education.]~~

~~[(3)]~~ "Fire department" means a department of a local government with permanent, fully paid, full-time employees organized to prevent or suppress fires.

(3) ~~[(4)]~~ "Fire protection personnel" means:

(A) permanent, fully paid, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft crash and rescue fire protection personnel;

or

(C) permanent, fully paid, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

- (i) fire suppression;
- (ii) fire inspection;
- (iii) fire and arson investigation;
- (iv) marine fire fighting;
- (v) aircraft crash fire fighting and rescue;
- (vi) fire training;
- (vii) fire education;

(viii) fire administration; and
 (ix) any other position necessarily or customarily related to fire prevention and suppression.

(4) [(5)] "Local government" means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) [(6)] "Marine fire protection personnel" means permanent, fully paid, full-time local governmental employees who work aboard a fireboat and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) [(7)] "Protective clothing" means garments, including turnout coats, bunker coats, boots, gloves, trousers, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations.

~~[Sec. 416.002. COMMISSION. The Commission on Fire Protection Personnel Standards and Education is an agency of the state.]~~

~~[Sec. 416.003. APPLICATION OF SUNSET ACT. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1991.]~~

~~[Sec. 416.004. COMPOSITION OF COMMISSION. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate. A member must be a resident of this state and must be qualified by experience or education in the field of fire protection. Appointed members serve staggered six-year terms. The commissioner of higher education and the commissioner of education shall serve as ex officio members of the commission.]~~

~~[(b) A vacancy in an office of a member of the commission shall be filled for the unexpired term.]~~

~~[(c) If a public officer is appointed to the commission, service on the commission is an additional duty of the office.]~~

~~[Sec. 416.005. OFFICERS, QUORUM, MEETINGS. (a) At its first meeting after appointment of members to serve regular terms, the commission shall elect from among its appointed members a chairman, vice-chairman, and secretary.]~~

~~[(b) Five members constitute a quorum.]~~

~~[(c) The commission may meet at times and places in the state that it considers proper. The chairman may call a meeting on the chairman's own motion and shall call a meeting on the written request of five members.]~~

~~[Sec. 416.006. COMPENSATION AND EXPENSES. A member of the commission serves without compensation for service on the commission but is entitled to reimbursement for actual and necessary expenses incurred in performance of functions under this chapter.]~~

Sec. 419.022 [416.007]. GENERAL POWERS RELATING TO THIS SUBCHAPTER. (a) The commission may:

(1) [adopt rules for the administration of this chapter and for the commission's internal management and control;

(2) employ an executive director and other personnel necessary in the performance of commission functions;

(3) accept donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(4) report to the governor annually, and to the legislature at each regular session, on its activities, with recommendations on matters under its jurisdiction, and make other reports that it considers desirable;

(5) require the submission of reports and information by a [state or] local governmental agency in this state that employs fire protection personnel;

(2) assist fire departments and fire protection personnel with problems related to fire-fighting techniques, clothing, and equipment;

(3) assist fire departments and local governments with the development and updating of local fire codes;

(4) recommend staffing patterns to fire departments;
~~[(6) make or encourage studies of fire protection, including fire administration;~~

~~[(7) conduct research to improve fire protection and fire administration and stimulate research by public and private agencies for that purpose;]~~ and

(5) ~~[(8)]~~ establish minimum educational, training, physical, and mental ~~[-and moral]~~ standards for admission to employment as fire protection personnel in a permanent, temporary, or probationary status and for advanced or specialized fire protection personnel positions.

(b) The commission may not change a minimum standard under Subsection (a)(5) to a standard that is less stringent than the applicable standard set by the Commission on Fire Protection Personnel Standards and Education in rules that were in effect on August 31, 1991.

Sec. 419.023. FIRE PROTECTION PERSONNEL ADVISORY COMMITTEE. (a) The commission shall establish a fire protection personnel advisory committee to assist the commission in matters relating to fire protection personnel and fire departments. The committee shall be composed of nine members appointed by the commission. Six members must be fire protection personnel or retired fire protection personnel who collectively represent various areas in the field of fire protection. Three members must be instructors of fire protection personnel. A committee member serves at the will of the commission.

(b) The committee shall elect a member of the committee as the presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee periodically shall review commission rules relating to fire protection personnel and fire departments and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed changes and additions to the rules that relate to fire protection personnel and fire departments to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

Sec. 419.024 ~~[416.008]~~. LOCAL GOVERNMENT POWERS. Except as expressly provided by this chapter, this subchapter ~~[chapter]~~ does not limit the powers, rights, duties, or responsibilities of a local government and does not affect Chapter 143, Local Government Code.

Sec. 419.025 ~~[416.009]~~. MANUAL. The commission shall set and collect a fee for a manual that states rules and minimum standards for fire protection personnel. The amount of the fee may not exceed the cost of preparing, printing, and distributing the manual.

Sec. 419.026 ~~[416.010]~~. FEES FOR CERTIFICATES. (a) The commission shall set and collect a fee of not more than \$35 ~~[\$20]~~ for each certificate that the commission issues or renews under this subchapter, except that if a person holds more than one certificate the commission may collect only one fee each year for the renewal of those certificates. The employing agency or entity shall pay this fee as provided by commission rule. The certificate must be renewed annually.

(b) The commission shall set and collect a fee for each examination given to fire protection personnel for basic certification under this subchapter ~~[chapter]~~. The amount of the fee may not exceed the cost of preparing, printing, administering, and grading the examination.

(c) The commission may revoke, refuse to issue, or refuse to renew the certificate of fire protection personnel for failure to pay a fee required under Subsection (a).

(d) The commission shall send the fees authorized by Subsection (a) and Section 419.033(b) to the state treasurer, who shall deposit 80 percent of the fees collected annually into the general revenue fund and 20 percent of the fees collected annually into a special account in the general revenue fund dedicated for use by the commission in providing training assistance under Section 419.031 and to defray the costs of performing inspections under Section 419.027.

Sec. 419.027. INSPECTIONS. The commission shall attempt to visit and inspect at least biennially each institution or facility conducting courses for training fire protection personnel and recruits, each fire department, and each local governmental agency providing fire protection to determine if the department, agency, institution, or facility is complying with this chapter and commission rules.

~~[(Sections 416.012 to 416.020 reserved for expansion)]~~

~~[SUBCHAPTER B.—EDUCATION]~~

Sec. 419.028 ~~[416.021]~~. TRAINING PROGRAMS AND INSTRUCTORS.

(a) The commission shall establish and maintain fire protection training programs conducted by the commission staff or through agencies and institutions that the commission considers appropriate. The commission may authorize reimbursement for a local governmental ~~[or state]~~ agency for expenses in attending the training programs as authorized by the legislature.

(b) The commission may:

(1) through issuance or revocation of a certificate, approve or revoke the approval of an institution or facility for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits;

(2) operate schools and school facilities and conduct preparatory, in-service, basic, and advanced courses in the schools and facilities, as the commission determines, for fire protection personnel or recruits;

(3) certify persons as qualified fire protection personnel instructors under conditions that the commission prescribes;

(4) ~~[visit and inspect an institution or facility conducting courses for training fire protection personnel and recruits and make necessary evaluations to determine if it is complying with this chapter and commission rules;~~

~~[(5)]~~ contract with persons or public or private agencies, as the commission considers necessary, for services, facilities, studies, and reports that the commission requires to cooperate with local governmental agencies in training programs and to otherwise perform its functions; and

(5) ~~[(6)]~~ revoke the certification of ~~[fire protection personnel and]~~ fire protection personnel instructors.

Sec. 419.029 ~~[416.022]~~. TRAINING CURRICULUM. The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits.

Sec. 419.030 ~~[416.023]~~. COOPERATION WITH OTHER ENTITIES FOR TRAINING PURPOSES. The commission may consult and cooperate with a local governmental agency, other governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs of courses of instruction for fire protection personnel, including the preparation or implementation of continuing education or training programs.

Sec. 419.031 ~~[416.024]~~. TRAINING ASSISTANCE. ~~[(a) The commission shall remit the fees authorized by Section 416.010(a) to the state treasurer, who shall deposit 80 percent of the fees collected annually into the general revenue fund and 20 percent of the fees collected annually into a fund dedicated for use by the commission in providing training assistance to fire departments throughout the state as provided by Subsection (b):~~

~~[(b)]~~ The commission shall adopt rules and procedures for the administration of a training assistance program under this subchapter. The training assistance

provided to fire departments under this subchapter may be provided by any of the following methods:

- (1) purchasing and providing training aids to fire departments on a temporary or permanent basis;
- (2) financing training seminars for fire departments; or
- (3) paying instructor fees to teach specialized courses for fire departments that employ fully paid fire protection personnel.

~~[[Sections 416.025 to 416.030 reserved for expansion]]~~

~~[SUBCHAPTER C. STANDARDS FOR APPOINTMENT]~~

Sec. 419.032 ~~[416.031]~~. APPOINTMENT OF FIRE PROTECTION PERSONNEL. (a) A fire department may not appoint a person to the fire department, except on a temporary or probationary basis, unless the person:

- (1) has satisfactorily completed a preparatory program of training in fire protection at a school approved or operated by the commission; and
- (2) meets the qualifications established by the commission under Subsection (b).

(b) The commission by rule may establish qualifications relating to minimum age, education, physical and mental condition, citizenship, ~~[good moral character,]~~ basic certification tests, continuing education or training programs, and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel. The commission shall prescribe the means of presenting evidence of fulfillment of these qualifications. This chapter does not preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel that exceed the minimum qualifications set by the commission.

(c) Fire protection personnel who receive temporary or probationary appointment and who fail to satisfactorily complete a basic course in fire protection, as prescribed by the commission, before one year after the date of the original appointment forfeit, and shall be removed from, the position. A temporary or probationary appointment may not be extended beyond one year by renewal of appointment or otherwise, except that on petition of a fire department one year or more after the date of the forfeiture and removal, the commission may reinstate the person's temporary or probationary employment. Fire protection personnel must complete a commission-approved training course in fire suppression before being assigned full-time to fire suppression duties.

(d) The commission may certify persons who are qualified under this subchapter ~~[chapter]~~ to be fire protection personnel. The commission shall adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this state and shall issue to a person meeting the rules a certificate evidencing satisfaction of Subsections (a) and (b). The commission may waive any certification requirement for an applicant with a valid license from another state having certification requirements substantially equivalent to those of this state.

(e) Fire protection personnel serving under permanent appointment before September 1, 1972, are not required to meet a requirement of Subsection (a) or (b) as a condition of tenure or continued employment or for eligibility for a promotional examination for which they are otherwise eligible. The fire protection personnel are eligible to attend training courses subject to commission rules.

Sec. 419.033. CERTIFICATE EXPIRATION. (a) The commission by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, certificate fees payable on the date set by commission rule shall be prorated on a monthly basis

so that each fire department or other employing entity shall pay only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(b) The commission shall issue to a person who has held a commission certificate but is no longer employed by an entity that is regulated by the commission a one-time certificate that states the level of certification held by the person on the date the person left the regulated entity's employment. The commission shall prescribe the procedure under which a person applies for a certificate under this subsection. The commission shall set and collect from the person a fee of not more than \$35 for the certificate.

Sec. 419.034. CERTIFICATE RENEWAL. (a) A fire department or other employing entity may renew an unexpired certification by paying to the commission before the expiration date of the certificate the required renewal fee.

(b) If a person's certificate has been expired for 30 days or less, the fire department or other employing entity may renew the certificate by paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(c) If a person's certificate has been expired for longer than 30 days but less than one year, the fire department or other employing entity may renew the certificate by paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(d) If a person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to recover the cost of administering the proficiency examination. The fire department or other employing entity shall pay the certification fee.

(e) At least 30 days before the expiration of a person's certificate, the commission shall send written notice of the impending certificate expiration to the last known fire department or other employing entity employing the regulated person according to the records of the commission.

Sec. 419.035. CERTIFICATION EXAMINATIONS. (a) Not later than the 30th day after the date on which a certification examination is administered under this subchapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails an examination administered under this subchapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

Sec. 419.036. DISCIPLINARY ACTIONS. (a) The commission may revoke or suspend a certificate, place on probation a person whose certificate has been suspended, or reprimand a regulated person for a violation of this subchapter or a rule of the commission. If a regulated person's suspension is probated, the commission may require the practitioner:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) If the commission proposes to suspend or revoke a person's certificate, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission.

Sec. 419.037 [416.032]. APPOINTMENT AS MARINE FIRE PROTECTION PERSONNEL. (a) The commission shall adopt requirements for certification of marine fire protection personnel. A person may not be appointed to a marine fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Marine fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Marine fire protection personnel serving under permanent appointment with five or more years' service before September 1, 1978, have satisfied the training requirements by experience.

Sec. 419.038 [416.033]. APPOINTMENT TO AIRCRAFT CRASH AND RESCUE FIRE PROTECTION PERSONNEL POSITION. (a) The commission shall adopt requirements for certification of aircraft crash and rescue fire protection personnel. A person may not be appointed to an aircraft crash and rescue fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Aircraft crash and rescue fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Aircraft crash and rescue fire protection personnel serving under permanent appointment with two or more years' service before September 1, 1984, have satisfied the training requirements.

Sec. 419.039 [416.034]. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) accepts an appointment in violation of Section 419.032 [416.031] or 419.037 [416.032];

(2) knowingly accepts an appointment in violation of Section 419.038 [416.033];

(3) appoints or retains a person in violation of Section 419.032 [416.031]; or

(4) appoints a person in violation of Section 419.037 [416.032] or 419.038 [416.033].

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

[Sec. 416.035. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.

[Sec. 416.036. ADMINISTRATIVE AND CIVIL PENALTIES; INJUNCTION. (a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance

with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):

~~[(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed \$1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney's fees, and costs incurred by the commission or the attorney general's office under this subsection.~~

~~[[Sections 416.037-416.040 reserved for expansion]~~

~~[SUBCHAPTER D. PROTECTIVE CLOTHING AND EQUIPMENT]~~

Sec. 419.040 ~~[416.041]~~. PROTECTIVE CLOTHING. (a) A local governmental agency providing fire protection shall provide and maintain protective clothing for all of its fire protection personnel or provide allowances to these fire protection personnel to cover the purchase and maintenance of protective clothing and require the fire protection personnel to maintain the clothing to meet minimum standards. The protective clothing must comply with minimum standards of the National Fire Protection Association or its successor.

(b) The National Fire Protection Association standard applicable to an item of clothing is the standard in effect when the agency contracts for the item. An agency may continue to use clothing in use or contracted for before a change in a standard unless the commission determines that the continued use constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.

Sec. 419.041 ~~[416.042]~~. SELF-CONTAINED BREATHING APPARATUS. (a) Each ~~[state or]~~ local governmental agency providing fire protection shall furnish all of its fire protection personnel who engage in fire fighting with self-contained breathing apparatus that complies with a nationally recognized standard approved by the commission for [the minimum approval and certification requirements of the National Institute For Occupational Safety and Health or its successor with respect to] self-contained breathing apparatus for use by fire protection personnel.

(b) At least once in each 30-day period the agency shall test each self-contained breathing apparatus used in the agency according to the testing procedures included in a nationally recognized standard approved by the commission for self-contained breathing apparatus [recommended by the National Institute For Occupational Safety and Health or the American National Standards Institute, Inc].

(c) A fire department that uses compressed breathing air compressors or any other breathing air systems, including air purchased from private sources, to refill self-contained breathing apparatus air bottles used by fire protection personnel shall have samples of compressed air from those systems tested at least twice annually by a competent testing laboratory or facility that has equipment designed to test compressed breathing air. The tests must include a check of the percentages of oxygen, water, hydrocarbons, carbon monoxide, carbon dioxide, and gaseous hydrocarbons in the compressed breathing air. The quality of the compressed breathing air and the tests of the compressed breathing air quality must conform with the quality and testing procedures included in a nationally recognized standard approved by the commission for self-contained breathing apparatus [recommended by the American National Standards Institute, Inc].

Sec. 419.042 ~~[416.043]~~. COMMISSION ENFORCEMENT. The commission shall enforce Sections 419.040 and 419.041 [this subchapter] and may adopt minimum standards consistent with those sections [this subchapter] for protective clothing and self-contained breathing apparatus for fire protection personnel.

[Sections 419.043-419.050 reserved for expansion]

SECTION 3. Subchapter B, Chapter 417, Government Code, is transferred to Chapter 419, Government Code, redesignated as Subchapter C of that chapter, and amended to read as follows:

SUBCHAPTER C [B]. FIRE DEPARTMENT
EMERGENCY PROGRAM [BOARD]

Sec. 419.051 ~~[417.021]~~. DEFINITIONS. In this subchapter:

(1) ~~["Board" means the Fire Department Emergency Board.~~
 [(2)] "Program" means the fire department emergency program.
 (2) [(3)] "Eligible local fire departments and public fire-fighting organizations" means municipal fire departments, volunteer fire departments, and publicly supported organizations that provide equipment or training to fire departments.

(3) "Equipment" includes protective clothing as defined by Section 419.021 and self-contained breathing apparatus.

Sec. 419.052 ~~[417.022]~~. PURPOSE. The purpose of this subchapter is to promote efficient fire protection for the residents of this state by providing to eligible local fire departments and public fire-fighting organizations:

(1) long-term or low interest loans or other financial assistance as the commission [board] considers necessary to purchase necessary fire-fighting equipment and facilities; and

(2) scholarships and grants to better educate and train their members.

~~[Sec. 417.023. CREATION OF BOARD. (a) The Fire Department Emergency Board is created as an adjunct to the state fire marshal's office.~~

[(b) The state fire marshal shall provide to the board necessary office space and equipment and shall share administrative functions to the extent possible. At the board's request, the state fire marshal may provide to the board the staff necessary to assist the board in administering this subchapter.

~~[Sec. 417.024. MEMBERSHIP. (a) The board is composed of seven members appointed by the governor with the advice and consent of the senate.~~

[(b) Five members must be involved in fire service activities. Two members must be representatives of the general public.

[(c) The governor shall appoint three fire service members from a list of eligible persons submitted by the State Firemen's and Fire Marshals' Association of Texas. The governor shall appoint two fire service members from a list of eligible persons submitted by the Texas State Association of Fire Fighters. Each list must contain the names of at least three eligible persons for each appointment that will be made from that list.

~~[Sec. 417.025. TERMS. Members of the board hold office for two-year terms that expire on February 1 of each odd-numbered year.~~

~~[Sec. 417.026. OFFICERS; MEETINGS. (a) The board annually shall elect a chairman and a vice-chairman.~~

[(b) The board shall meet at the call of the chairman or of a majority of the members, or as provided by board rules.

~~[Sec. 417.027. PER DIEM AND EXPENSES. Each board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in board business. A member is also entitled to compensation for transportation expenses as provided by the General Appropriations Act, but may not receive any compensation for other travel expenses, such as expenses for meals and lodging.~~

~~[Sec. 417.028. APPLICATION OF SUNSET ACT. The Fire Department Emergency Board is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the board is abolished and this subchapter expires September 1, 2001.]~~

Sec. 419.053 [417.029]. GENERAL POWERS AND DUTIES OF COMMISSION UNDER THIS SUBCHAPTER [BOARD]. (a) The commission [board] shall:

- (1) administer the fire department emergency program as provided by this subchapter and commission [board] rules;
- (2) contract with professional experts as necessary to assist the commission [board] in carrying out its powers and duties under this subchapter;
- (3) adopt rules for the administration of this subchapter;
- (4) adopt and use a seal;
- (5) administer oaths and take testimony on matters within the commission's [board's] jurisdiction under this subchapter;
- (6) keep an accurate record of its meetings, receipts, and disbursements;
- (7) submit to the presiding officers of each house of the legislature an annual report of the commission's [board's] activities under this subchapter; and
- (8) consider and approve or disapprove applications for scholarships, grants, loans, and other financial assistance as provided by this subchapter.

[(b) The board may accept gifts, grants, and donations for use in carrying out the purposes of this subchapter.]

Sec. 419.054. FUNDS ALLOCATION ADVISORY COMMITTEE. (a) The funds allocation advisory committee is composed of six members. Three members are appointed by the State Firemen's and Fire Marshals' Association of Texas. Three members are appointed by the Texas State Association of Fire Fighters. A committee member serves at the will of the authority that appointed the member.

(b) The committee shall elect a member of the committee as presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee shall assist the commission in matters relating to the administration of this subchapter. The committee periodically shall review commission rules relating to the program and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed changes and additions to the rules that relate to the program to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

(d) The committee shall review and evaluate all applications for financial assistance under this subchapter according to the rules and procedures adopted by the commission. The committee shall recommend to the commission which applications should be approved and which applications should be disapproved. If the commission does not concur with the committee's recommendation, the commission shall indicate to the committee the reasons that the commission did not concur with the recommendation and return the applications regarding which the commission did not concur to the committee for further review and evaluation.

[Sec. 417.030. PROGRAM DIRECTOR, EMPLOYEES. (a) The board shall employ a director to be the chief administrative officer of the program. The board may delegate to the director full authority to manage and operate the program; subject only to board orders.

(b) The director may employ persons necessary for the proper management of the program or make use of persons employed by and made available by the state fire marshal, as appropriate.

(c) The board shall determine the terms of employment and the compensation to be paid to employees employed by the director under this section. Before

adopting its annual budget, the board must submit its proposed budget to the state fire marshal for review and comment, but the state fire marshal's approval is not necessary for the board's adoption of its budget.]

Sec. 419.055 [417.031]. CREATION OF PROGRAM. The fire department emergency program is created to provide scholarships, grants, loans, and other financial assistance to eligible local fire departments and other public fire-fighting organizations.

Sec. 419.056 [417.032]. LOANS OR OTHER FINANCIAL ASSISTANCE FOR EQUIPMENT AND FACILITIES. (a) The commission [board] may make loans available or provide other financial assistance to an eligible local fire department or other public fire-fighting organization to:

(1) purchase fire-fighting equipment that is necessary for the local fire department or other public fire-fighting organization to meet its fire-fighting responsibilities; or

(2) finance equipment and facilities necessary to comply with federal and state law.

(b) The commission [board] by rule shall establish guidelines for determining eligibility for a loan or other financial assistance under this subchapter and for determining the amounts of loans or other financial assistance that the commission [board] may make available to eligible local fire departments and other public fire-fighting organizations. To be eligible for a loan or other financial assistance, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission [board] that without a loan or other financial assistance the local fire department or other public fire-fighting organization would be unable to purchase necessary fire-fighting equipment.

(c) The commission [board] by rule shall establish the types of equipment and facilities that a local fire department or other public fire-fighting organization may purchase with a loan or other financial assistance from the commission [board]. The commission may consider national standards relating to fire-fighting equipment and facilities when adopting rules under this subsection.

(d) Out of money appropriated for the implementation of this subchapter, the commission may pay the certification fees of volunteer fire fighters who choose to be certified by the commission under Subchapter D.

(e) Except for money that is spent for administrative costs under this subchapter, the commission each fiscal year shall direct one-half of the money it spends that is appropriated for the implementation of this subchapter to municipal fire departments and one-half of that money to fire-fighting entities located in rural and unincorporated areas.

Sec. 419.057 [417.033]. REVOLVING FUND. The comptroller shall establish in the state treasury the Fire Department Emergency Program [Board] revolving fund account. All money collected by the commission [board] as loan payments and as payments on defaulted loans shall be deposited to the credit of the fund. Money deposited in the fund shall be used to make other loans under the program created by this subchapter.

Sec. 419.058 [417.034]. SCHOLARSHIPS AND GRANTS FOR EDUCATION AND TRAINING. (a) The commission [board] may award scholarships and grants to an eligible local fire department or other public fire-fighting organization. A local fire department or other public fire-fighting organization may use a scholarship or grant awarded under this subchapter only to educate and train its members to more effectively meet the members' fire-fighting responsibilities.

(b) The commission [board] by rule shall establish guidelines for determining eligibility for a grant or scholarship under this subchapter and for determining the amount that the commission [board] may award to an eligible local fire department

or other public fire-fighting organization. To be eligible for a scholarship or grant, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission [board] that without a scholarship or grant the local fire department or other public fire-fighting organization would be unable to adequately train and educate its members.

(c) The commission [board] by rule shall determine the types of educational and training programs for which the commission [board] may award a scholarship or grant under this subchapter.

Sec. 419.059 [417.035]. APPLICATION FOR SCHOLARSHIP, GRANT, LOAN, OR OTHER FINANCIAL ASSISTANCE. (a) A local fire department or other public fire-fighting organization may apply in writing to the commission [board] for a scholarship, grant, loan, or other financial assistance.

(b) The application must include the following information:

- (1) the official name and address of the applicant;
- (2) the purposes for which the local fire department or other public fire-fighting organization would use the requested scholarship, grant, loan, or other financial assistance;
- (3) the amount of the scholarship, grant, loan, or other financial assistance requested;
- (4) if a loan, the proposed plan for repayment;
- (5) financial information relating to the applicant as requested by the commission [board]; and
- (6) any other information the commission [board] requires in order to make a decision on the application.

(c) The commission [board] by rule shall prescribe the form of the application and the procedure for submitting and processing the application.

Sec. 419.060 [417.036]. REVIEW OF APPLICATION. In addition to the criteria established by commission [board] rules, the commission [board], in reviewing an application, shall consider:

- (1) the purpose or purposes for which the applicant would use the scholarship, grant, loan, or other financial assistance;
- (2) the needs of that applicant as compared to the needs of other eligible applicants;
- (3) the financial need of the applicant for the money;
- (4) the availability of other money to the applicant; and
- (5) the ability of the applicant to finance its activities without a state scholarship, grant, loan, or other financial assistance.

Sec. 419.061 [417.037]. APPROVAL OR REJECTION OF APPLICATION. The commission [board] by rule shall establish procedures for accepting or rejecting applications.

Sec. 419.062 [417.038]. CONTRACTS, AGREEMENTS, AND OTHER DOCUMENTS. (a) If the commission [board] approves a loan application, the commission [board] shall contract with the applicant to provide the funds under this subchapter. The commission [board] shall provide the funds in accordance with the terms and conditions provided by this subchapter and commission [board] rules.

(b) The commission [board] may execute any other documents necessary to make a legally binding agreement as to the transfer and expenditure of the amount to be loaned or awarded and the repayment of any amount loaned.

Sec. 419.063 [417.039]. LIMITATION ON SCHOLARSHIPS, GRANTS, LOANS, AND OTHER FINANCIAL ASSISTANCE. (a) The commission [board] may not make awards or loans under this subchapter to any one applicant in a total amount that is greater than an amount equal to five percent of the total amount of money appropriated to the program for the fiscal year during which the award or loan is made.

(b) The commission [board] may not approve an application if the current appropriations for the program are insufficient to pay the total amount requested under the application.

Sec. 419.064 ~~[417.040]~~. DEFAULT ON LOAN. (a) If a local fire department or other public fire-fighting organization cannot make payments on a loan made under this subchapter, the commission [board] shall attempt to collect from the borrower as provided by this subchapter, the terms of the loan contract, and other agreements.

(b) The attorney general, at the request of the commission [board], shall take all necessary legal action to assist the commission [board] in recovering amounts of a defaulted loan.

[Sections 419.065-419.070 reserved for expansion]

SECTION 4. Subtitle B, Title 4, Government Code, is amended by adding Subchapters D, E, and Z of Chapter 419 to read as follows:

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

Sec. 419.071. VOLUNTARY CERTIFICATION AND REGULATION PROGRAM FOR VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS. (a) The commission shall develop a voluntary certification and regulation program for volunteer fire fighters and volunteer fire departments. Components of the program developed by the commission shall include certification and regulation of volunteer fire fighters, certification and regulation of facilities that train volunteer fire fighters, and the regulation of protective clothing and self-contained breathing apparatus.

(b) The commission shall contract with a statewide organization whose members include both volunteer and paid fire fighters to administer and implement the program. The commission in the contract shall reserve the right to evaluate the administration and implementation of the program under the contract and the right to observe and to require information from the other party to the contract so that the commission may perform a meaningful evaluation.

(c) A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters is not required to participate in any component of the commission's program under this chapter. A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters may on request participate in one or more components of the program under this subchapter as appropriate.

(d) The program shall make available to volunteer fire fighters the same level of training that is made available to paid fire protection personnel and recruits through the commission's basic certification program under Subchapter B, but in a way that takes into account the circumstances of volunteer fire fighters.

(e) The commission by rule may:

(1) establish qualifications relating to minimum age, education, and physical and mental condition required for certification under this subchapter;

(2) establish standards relating to training programs and to continuing education under this subchapter;

(3) establish the training components required for certification under this subchapter;

(4) establish testing procedures for certification candidates and procedures to test the satisfactory completion of training components; and

(5) recognize other training for credit towards certification under this chapter.

(f) Qualifications established for persons under this section may only be qualifications for certification and may not be qualifications for entering a certification program.

Sec. 419.072. VOLUNTEER FIRE FIGHTER ADVISORY COMMITTEE. (a) The commission shall establish a volunteer fire fighter advisory committee to assist the commission in matters relating to volunteer fire fighters and volunteer fire departments. The committee shall be composed of nine members appointed by the commission. Six members must be volunteer fire fighters who collectively represent various areas in the field of fire protection. Three members must be instructors of volunteer fire fighters. Six of the nine members must be appointed from a list submitted to the commission by the State Firemen's and Fire Marshals' Association of Texas. A committee member serves at the will of the commission.

(b) The committee shall elect a member of the committee as presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee shall develop and recommend to the commission for approval the rules of the program under this subchapter. The committee periodically shall review commission rules relating to the commission's program under this subchapter and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed rules and all proposed changes and additions to the rules that relate to the program under this subchapter to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

Sec. 419.073. CERTIFICATION FEE. The commission shall set and collect a fee of not more than \$10 for each certificate issued under this subchapter designed to recover the commission's costs under this subchapter. The commission may choose to pay the fee out of money appropriated for the implementation of Subchapter C.

Sec. 419.074. RECOGNITION OF CERTAIN PRIOR CERTIFICATIONS. The commission shall, upon application, certify a person under the commission's program under this subchapter if the person received an advanced certificate from the State Firemen's and Fire Marshals' Association of Texas before September 1, 1993.

Sec. 419.075. BECOMING CERTIFIED UNDER SUBCHAPTER B. A volunteer fire fighter who held an active State Firemen's and Fire Marshals' Association of Texas Advanced Certification on May 1, 1991, or who has completed the training required for a State Firemen's and Fire Marshals' Association of Texas Advanced Certification not later than December 31, 1992, is eligible to be certified to be fire protection personnel under Subchapter B after successful completion of the fire protection personnel examination administered under Subchapter B. A volunteer fire fighter who did not hold an active State Firemen's and Fire Marshals' Association of Texas Advanced Certification on May 1, 1991, or who does not complete the required training for a State Firemen's and Fire Marshals' Association of Texas Advanced Certification by December 31, 1992, is eligible to be certified to be fire protection personnel under Subchapter B only after completing a commission-approved certification program and successful completion of the fire protection personnel examination administered under Subchapter B.

[Sections 419.076-419.080 reserved for expansion]

SUBCHAPTER E. PAID FIRE FIGHTERS AND FIRE DEPARTMENTS

NOT

CONNECTED WITH A LOCAL GOVERNMENT

Sec. 419.081. MANDATORY INSPECTION AND REGULATION OF CERTAIN STATE AGENCIES. (a) Each state agency providing fire protection

shall furnish all of its employees who engage in fire fighting with self-contained breathing apparatus as provided by Section 419.041 for local fire departments.

(b) At least biennially, the commission shall visit and inspect each state agency providing fire protection to determine if the agency is complying with applicable portions of this chapter and commission rules.

Sec. 419.082. TRAINING FOR STATE AGENCY FIRE FIGHTERS. The commission may allow a state agency employee who provides fire protection to attend fire protection training programs conducted under Subchapter B, including an employee who is not regulated under Section 419.083. The commission may authorize reimbursement for a state agency's costs under this section as authorized by the legislature, whether or not the agency is regulated under Section 419.083.

Sec. 419.083. VOLUNTARY REGULATION OF CERTAIN STATE AGENCIES AND STATE AGENCY EMPLOYEES. (a) Certain state agencies and state agency employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A state agency employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a state agency employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section, except that the commission may require reports from the agency that relate to the employee. A state agency may pay an employee's fees under this subsection.

(c) A state agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a state agency or agency employee may apply for regulation under this section and the means by which the state agency or agency employee may present evidence that the agency or employee is eligible for regulation under this section.

(e) The commission shall determine whether a state agency or agency employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or employee meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or employee of its decision.

(f) A state agency or agency employee regulated under this section is subject to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A state agency or agency employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a state agency or agency employee must come into compliance with each requirement.

Sec. 419.084. VOLUNTARY REGULATION OF CERTAIN FEDERAL AGENCIES AND FEDERAL EMPLOYEES. (a) Certain federal agencies and federal employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A federal employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a federal employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section.

(c) A federal agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a federal agency or federal employee may apply for regulation under this section and the means by which a federal agency or federal employee may present evidence that the agency or employee is eligible for regulation under this section.

(e) The commission shall determine whether a federal agency or federal employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or employee meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or employee of its decision.

(f) A federal agency or federal employee regulated under this section is subject, to the extent allowed by federal law, to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A federal agency or federal employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a federal agency or federal employee must come into compliance with each requirement.

Sec. 419.085. VOLUNTARY REGULATION OF CERTAIN NONGOVERNMENTAL DEPARTMENTS. (a) A nongovernmental entity may apply to the commission for regulation under Subchapter B if:

(1) the entity is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021; and

(2) at the time of application, those fire protection employees are employed to provide fire protection for an unincorporated area that:

(A) constitutes a rating territory established by the State Board of Insurance with a protected key rate assigned by the board; and

(B) has a population of more than 25,000.

(b) The commission shall prescribe the procedures under which a nongovernmental entity may apply for regulation under this section and the means by which it may present evidence that it is eligible for regulation under Subsection (a).

(c) The commission shall determine whether an entity that has applied for regulation under this section is eligible for regulation under Subsection (a). The commission shall approve a request for regulation if the entity meets the requirements of Subsection (a), and the commission shall notify the applying entity and the affected fire protection employees of its decision.

(d) A nongovernmental entity, department, and fire protection employee regulated under this section are subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a local government, a fire department, or fire protection personnel employed by a local government.

(e) A person, department, or other entity that is subject to regulation under this section is entitled to a reasonable period in which to comply with the requirements of Subchapter B and applicable commission rules. The commission by rule shall determine the time period in which a person, department, or other entity must come into compliance with each requirement.

Sec. 419.086. ELIGIBILITY FOR CERTAIN TRAINING ASSISTANCE. If an entity or the employees of an entity are regulated under this subchapter so that

as a consequence of the regulation a certification fee is paid to the commission on behalf of each employee of the entity who would be fire protection personnel under Section 419.021 if the employee were employed by a local government, the commission shall use the special account in the general revenue fund created under Section 419.026(d) to provide training assistance to the entity to the same extent that the commission provides training assistance to a fire department under Section 419.031.

[Sections 419.087-419.900 reserved for expansion]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 419.901. KEY RATE SCHEDULE. (a) The commission shall review the key rate schedule of the State Board of Insurance at least once every four years. The commission shall recommend changes that the commission believes should be made in the schedule to the board.

(b) The commission shall inspect municipalities, using the key rate schedule, recommend the key rate to the State Board of Insurance for its approval, and report information obtained as a result of the inspection to the board. If the board does not approve a rate recommended by the commission, the board shall inform the commission of the reason and the commission shall recommend another rate.

(c) The commission and the State Board of Insurance shall adopt a memorandum of understanding that coordinates their respective duties relating to the key rate schedule.

Sec. 419.902. COORDINATION WITH FIREMEN'S TRAINING SCHOOL. The commission and the director of the Texas Engineering Extension Service of The Texas A&M University System shall enter into a memorandum of understanding to coordinate the responsibilities of the commission with the training provided by the firemen's training school operated under Section 86.16, Education Code. The commission and the director shall review and update the memorandum of understanding not later than the last month of each state fiscal year.

Sec. 419.903. COORDINATION WITH TEXAS FOREST SERVICE. The commission and the director of the Texas Forest Service shall enter into a memorandum of understanding to coordinate the provision of training assistance and other assistance to fire-fighting entities. The commission and the director shall review and update the memorandum of understanding not later than the last month of each state fiscal year.

Sec. 419.904. TECHNICAL ASSISTANCE TO RURAL FIRE PREVENTION DISTRICTS. The commission may on request provide technical assistance to rural fire prevention districts, including advice on the efficient and effective provision of fire protection within a district.

Sec. 419.905. APPEAL OF COMMISSION DECISIONS. (a) A person dissatisfied with an action of the commission may appeal the action in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.

Sec. 419.906. ADMINISTRATIVE AND CIVIL PENALTIES: INJUNCTION. (a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed \$1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney's fees, and costs incurred by the commission or the attorney general's office under this subsection.

SECTION 5. Subchapter A, Chapter 417, Government Code, is amended to read as follows:

[SUBCHAPTER A. OFFICE OF STATE FIRE MARSHAL]

Sec. 417.001. DEFINITION. In this chapter [subchapter], "commission" ["board"] means the Texas Commission on Fire Protection [State Board of Insurance].

Sec. 417.002. APPOINTMENT AND TENURE. The state fire marshal is appointed by the executive director of the commission subject to approval by the commission [chairman of the board]. The state fire marshal serves at the pleasure of the commission [board] and may be discharged at any time. The commission shall require the state fire marshal to report to the commission through the executive director.

Sec. 417.003. STATUS AS STATE-COMMISSIONED OFFICER. The state fire marshal is a state-commissioned officer and functions in that capacity subject to rules of the commission [board].

Sec. 417.004. GENERAL POWERS AND DUTIES. (a) The state fire marshal, under the supervision of the commission [board], shall administer and enforce applicable provisions of the Insurance Code and other law relating to the state fire marshal. The commission shall perform the supervisory and rule-making functions previously performed by the State Board of Insurance under this subsection. The commission and the board shall transfer information between the two agencies as necessary to allow the agencies to perform their statutory duties. The commission and the board may make and adopt by rule memoranda of understanding as necessary to coordinate their respective duties.

(b) The state fire marshal is the chief investigator in charge of the investigation of arson and suspected arson in the state.

Sec. 417.0041. PARTICIPATION OF CERTAIN ADVISORY COUNCILS IN RULEMAKING. (a) This section applies to rules adopted under Articles 5.43-1 through 5.43-4, Insurance Code, and to the advisory councils established under these articles.

(b) Each council periodically shall review commission rules implementing the article under which the council was established and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all changes and additions to rules that implement the article under which an advisory council was established to that council for development. If the commission does not approve a rule developed by the council, the commission shall indicate to the council the reasons that the commission did not approve the rule and return the rule to the council for further development.

Sec. 417.005. ADOPTION OF RULES. The commission [board], after consulting with the state fire marshal, shall adopt necessary rules to guide the state fire marshal and investigators commissioned by the state fire marshal in the investigation of arson and suspected arson.

Sec. 417.0051. FIRE PREVENTION AND SAFETY EDUCATION. The commission [board], through the state fire marshal, may use pertinent and timely facts relating to fires to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety.

Sec. 417.006. ARSON INVESTIGATORS. The state fire marshal may commission arson investigators to act under his supervision and may revoke an investigator's commission for just cause.

Sec. 417.007. INVESTIGATION OF FIRE. (a) The state fire marshal shall immediately investigate a fire occurring in this state in which property is destroyed if the commission [board] directs the investigation or, in the discretion of the commission [board], if the investigation is requested by:

(1) the mayor, fire chief, fire marshal, or police chief of a municipality in which a fire occurs;

(2) a county or district judge, sheriff, county fire marshal, chief or fire marshal of a fire department in an unincorporated area, or county attorney of a county in which a fire occurs;

(3) a fire insurance company interested in a loss or the company's general, state, or special agent;

(4) an insurance policyholder, property owner, or lessee sustaining a fire loss;

(5) a justice of the peace or a constable of a precinct in which a fire occurs; or

(6) officials of a state or federal law enforcement agency or local or special governmental district involved or interested in a fire loss that occurred in this state.

(b) The state fire marshal at any time may enter a building or premises at which a fire is in progress or has occurred and is under control of law enforcement or fire service officials to investigate the cause, origin, and circumstances of the fire. If control of the building or premises has been relinquished, entry must be in compliance with search and seizure law and applicable federal law.

(c) The state fire marshal shall conduct the investigation at the place of the fire and before an insured loss may be paid. The state fire marshal shall ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally. The state fire marshal shall make a written report of the investigation to the commission [board].

(d) If the state fire marshal believes that further investigation is necessary, the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing. The state fire marshal may administer oaths and compel the attendance of witnesses and the production of documents.

(e) If the state fire marshal believes that there is sufficient evidence to charge a person with arson, attempted arson, conspiracy to commit fraud, or another offense related to the matter under investigation, the state fire marshal shall give to the appropriate prosecuting attorney all evidence and relevant information that has been obtained, including the names of witnesses. The state fire marshal shall arrest the person if the person has not been arrested by some other authority. The state fire marshal shall assist in the prosecution of any complaint he files.

(f) The state fire marshal may, in his discretion, conduct or direct the conduct of an investigation in private and may exclude from the place of the investigation persons not needed for the investigation. Witnesses may be separated from each other and not be allowed to communicate with other witnesses until after they have testified.

(g) The state fire marshal may elect to withhold from the public any testimony taken in an investigation under this section.

Sec. 417.008. RIGHT OF ENTRY; EXAMINATION AND CORRECTION OF DANGEROUS CONDITIONS. (a) On the complaint of any person, the state fire marshal, at any reasonable time, is entitled to enter any building or premises in the state.

(b) The state fire marshal shall enter and is entitled, at any time, to enter any mercantile, manufacturing, or public building, place of amusement, or place where public gatherings are held, or any premises belonging to such a building or place, and make a thorough examination.

(c) The state fire marshal shall order the removal of a building or structure or other remedial action if he finds that:

(1) the building or other structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures.

(d) The occupant or owner of the building or premises shall immediately comply with an order made by the state fire marshal under this section. The state fire marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The state fire marshal is not required to give a bond.

Sec. 417.009. DELEGATION OF AUTHORITY. (a) If for any reason the state fire marshal is unable to make a required investigation in person, the marshal may designate the fire marshal of the city or town where the investigation is to be made or another suitable person to act for the state fire marshal.

(b) The designated person has the same authority with respect to the investigation as is provided by this chapter for the state fire marshal. The designated person is entitled to compensation as provided by action of the commission [board].

SECTION 6. Section 86.16, Education Code, is amended to read as follows:

Sec. 86.16. FIREMEN'S TRAINING SCHOOL. (a) The Texas A&M University System [university] shall conduct and maintain a firemen's training school through the Texas Engineering Extension Service as a unit of the university system in the manner deemed expedient and advisable by the system's board of regents.

(b) The firemen's training school advisory board is composed of:

(1) three members of the [teaching] staff of the system [the university] appointed by [the chairman of] the system's board of regents, one of whom shall be the director of the engineering extension service who serves ex officio as the chairman of the advisory board [directors]; [and]

(2) four members or representatives of the State Firemen's and Fire Marshals' Association of Texas or its successor, appointed by the president or other managing officer of that association;

(3) one person who is fire protection personnel as defined by Section 419.021, Government Code, and who is the head of a training division for the fire department of a political subdivision, appointed by the Texas Commission on Fire Protection; and

(4) one fire chief appointed by the president or other managing officer of the Texas Fire Chiefs Association or its successor.

(c) The advisory board shall confer with and advise the engineering extension service [board of directors] with reference to the organization of the school, the purchasing of equipment, the curriculum and program, and the conduct and management of the school.

(d) Expenditures for the per diem expenses of members of the advisory board and all other necessary expenses of the school shall be made only on the order of the system's board of regents [directors], and no warrants shall be paid unless also approved in writing by the director of the engineering extension service [president of the university, who shall be advised with respect to the conduct of the school].

SECTION 7. Chapter 753, Health and Safety Code, is amended by adding Section 753.0011 to read as follows:

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

SECTION 8. Section 755.033(a), Health and Safety Code, as added by S.B. 404, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The commissioner shall enter into interagency agreements with the Texas Department of Health, the Texas Commission on Fire Protection, and the State Board of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the commissioner.

SECTION 9. Section 792.003(b), Health and Safety Code, is amended to read as follows:

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted [by the State Board of Insurance] under Article 5.43-2, Insurance Code.

SECTION 10. Article 5.25, Insurance Code, is amended to read as follows:

Art. 5.25. BOARD SHALL FIX RATES. Except as provided by other law, the [The] State Board of Insurance shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Board shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Said Board shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Board to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or subdivisions of the State. The Board may designate one or more rating organizations, advisory organizations, or other agencies to gather, audit, and compile such experience of insurers, and the cost thereof shall be borne by such insurers.

SECTION 11. Article 5.43-1, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise

certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 12. Section 9, Article 5.43-1, Insurance Code, is amended to read as follows:

Sec. 9. **DELEGATION OF POWER BY STATE BOARD OF INSURANCE.** The State Board of Insurance may delegate the exercise of all or part of its functions, powers, and duties under this article, except for the issuance of licenses, certificates, and permits, ~~[and the formulation of rules and regulations;]~~ to a Fire Extinguisher Advisory Council whose members shall be appointed by the State Board of Insurance. The council shall assist in the review and formulation of rules adopted under this article in accordance with Section 417.0041, Government Code. The members shall be experienced and knowledgeable in one or more of the following areas: fire services, fire extinguisher manufacturing, fire insurance inspection or underwriting, fire extinguisher servicing, or be a member of a fire protection association or industrial safety association.

SECTION 13. Article 5.43-2, Insurance Code, is amended by adding Section 4A to read as follows:

Sec. 4A. **TRANSFER OF POWERS AND DUTIES.** The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 14. Section 6(a), Article 5.43-2, Insurance Code, is amended to read as follows:

(a) The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates and licenses, to the state fire marshal, and the state fire marshal along with assistance of ~~an~~ ~~[a nonbinding]~~ advisory council to be appointed by the board shall implement such rules as may be determined by the board in accordance with Section 417.0041, Government Code to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of persons and organizations engaging in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems; and

(2) the requirements for the planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems;

(B) conducting examinations and evaluating the qualifications of applicants for fire alarm technician or fire alarm planning superintendent licenses;

(C) evaluating and determining which organizations shall be approved as testing laboratories for the purpose of this article; and

(D) evaluating and approving required training programs for all persons who engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems.

SECTION 15. Article 5.43-3, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. **TRANSFER OF POWERS AND DUTIES.** The powers and duties assigned to the State Board of Insurance under this article are transferred to the

Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 16. Section 6(b), Article 5.43-3, Insurance Code, is amended to read as follows:

(b) The advisory council, in addition to other duties delegated by the board, shall in accordance with Section 417.0041, Government Code [may]:

(1) advise the State Fire Marshal concerning practices in the fire protection sprinkler system industry and the rules necessary to implement and administer this article;

(2) make recommendations to the State Fire Marshal regarding forms and procedures for certificates of registration and licenses.

SECTION 17. Section 5, Article 5.43-4, Insurance Code, is amended to read as follows:

Sec. 5. ADMINISTRATION. The board shall administer this article through the state fire marshal and may issue rules for ~~[it considers necessary to]~~ its administration in accordance with Section 417.0041, Government Code. The board, in promulgating [necessary] rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization. Rules may not be adopted under this article that are more restrictive than the rules in effect on January 1, 1991, without specific statutory authority.

SECTION 18. Article 5.43-4, Insurance Code, is amended by adding Sections 5A and 5B to read as follows:

Sec. 5A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

Sec. 5B. ADVISORY COUNCIL. The commission shall establish an advisory council to assist the commission in the administration of this article. The council is composed of five members who must be representatives from the fireworks industry, three of whom must be appointed from a list submitted to the commission by the Texas Pyrotechnic Association. A council member serves at the will of the commission. The council shall assist the commission in the review and adoption of rules under this article as provided by Section 417.0041, Government Code.

SECTION 19. As soon as possible after the effective date of this Act, the governor shall appoint the initial members of the Texas Commission on Fire Protection in accordance with Chapter 419, Government Code, as added by this Act. The governor shall appoint four members to a term expiring February 1, 1993, four members to a term expiring February 1, 1995, and four members to a term expiring February 1, 1997. The commission may not take action until all 12 appointees have taken office.

SECTION 20. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the Fire Department Emergency Board is abolished. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations of the board are transferred to the commission, and the Fire Department Emergency Board revolving fund is renamed the Fire Department Emergency Program revolving fund and transferred from the board to the commission.

(b) All rules of the Fire Department Emergency Board are continued in effect as rules of the Texas Commission on Fire Protection until superseded by a rule of the commission.

(c) Notwithstanding the changes in law made by this Act, until the date that the Fire Department Emergency Board is abolished as provided by this section the members of the board on the effective date of this Act may continue in office and exercise the powers and duties of the board under the law that governed the board before the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 21. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the Commission on Fire Protection Personnel Standards and Education is abolished. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations and other funds of the Commission on Fire Protection Personnel Standards and Education are transferred to the Texas Commission on Fire Protection.

(b) All rules of the Commission on Fire Protection Personnel Standards and Education are continued in effect as rules of the Texas Commission on Fire Protection until superseded by a rule of the new commission.

(c) All complaints, proceedings, and investigations before the Commission on Fire Protection Personnel Standards and Education are transferred without change in status to the Texas Commission on Fire Protection. The validity of a certificate issued by the Commission on Fire Protection Personnel Standards and Education is not affected by the abolition of the commission.

(d) Notwithstanding the changes in law made by this Act, until the date that the Commission on Fire Protection Personnel Standards and Education is abolished as provided by this section the members of the commission on the effective date of this Act may continue in office and exercise the powers and duties of the commission under the law that governed the commission before the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 22. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the powers and duties relating to the State Board of Insurance's key rate schedule that are assigned to the commission by Chapter 419, Government Code, as added by this Act, are transferred from the board to the commission. On that date, both all unspent appropriations to the board and all board employees that are required for the performance of those duties are transferred from the board to the commission. The board shall provide the commission with access to or copies of records that the commission requires to carry out the transferred duties. Until the date of transfer under this section, the board shall continue to exercise the powers and duties that will be transferred.

(b) The state fire marshal who is in office on the date of transfer under this section continues in office unless replaced by the Texas Commission on Fire Protection. Until the date of transfer under Subsection (a) of this section, the State Board of Insurance continues to exercise all powers and duties it exercised under prior law relating to the state fire marshal, the duties of the state fire marshal, and laws administered chiefly through the state fire marshal, and the prior law is continued in effect for this purpose. On the date of transfer under this section, all powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations and other funds of the state fire marshal's office or of the State Board of Insurance that relate to the state fire marshal are transferred to the Texas Commission on Fire Protection. The status of a complaint, proceeding, or investigation in which the state fire marshal is involved is not affected by the transfer of the state fire marshal under this Act.

(c) After the date of transfer under this section, the Texas Commission on Fire Protection shall maintain the current field offices of the state fire marshal as field offices of the commission.

(d) All rules of the State Board of Insurance that relate to transferred duties regarding the key rate schedule or the state fire marshal and associated powers and duties are continued in effect as rules of the Texas Commission on Fire Protection unless superseded by proper authority of the commission.

SECTION 23. (a) Not later than September 1, 1993, the Texas Commission on Fire Protection shall adopt its program for the voluntary regulation of volunteer fire fighters and volunteer fire departments under Chapter 419, Government Code, as added by this Act.

(b) The commission shall perform its initial review of the State Board of Insurance's key rate schedule as required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1995.

(c) The commission and the director of the Texas Engineering Extension Service shall enter into the memorandum of understanding relating to the firemen's training school required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1992.

(d) The commission and the director of the Texas Forest Service shall enter into the memorandum of understanding required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1992.

(e) The first policy statement required to be filed under Section 419.009(g), Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 24. This Act takes effect September 1, 1991.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Counts

Amend C.S.S.B. 383 by striking the following "Except as provided by other law, the [The]" as it appears before the words "State Board of Insurance" on lines 16 and 17, page 58 and insert in lieu thereof the word "The".

Amendment - Repp

Amend C.S.S.B. 383 in SECTION 1 of the bill by striking the first comma in Section 419.004(a)(2) and substituting ", at least one of whom must be actively involved in educating the public on fire prevention as a significant part of the person's duties, and".

The amendments were read.

Senator Carriker moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 383 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Moncrief, Glasgow, Barrientos, Dickson.

SENATE BILL 307 WITH HOUSE AMENDMENTS

Senator Carriker called S.B. 307 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Harris

Amend S.B. 307 in the following manner:

(1) at the end of line 13 of page 1 in the engrossed version of the bill, but before the period, add “, Administration, or related field”.

(2) strike all of line 16 and substitute the words “Health Care Administration.”

Amendment - Harris

Amend S.B. 307 as follows:

(a) The board shall employ the commissioner, who serves at the will of the board.

(b) Except as provided in subsection (c) the Commissioner must:

(1) have at least five years experience in the administration of public health systems, and

(2) be a person licensed to practice medicine in this state.

(c) The board may, based on the qualifications and experience in administering public health systems and upon two-thirds (2/3) vote of the board, employ a person other than a physician as the commissioner.

(d) If the board employs a person as commissioner who is not a physician, then the board shall designate a person licensed to practice medicine in this state as chief medical executive.

(e) The commissioner is the executive head of the department. The commissioner shall perform the duties assigned by the board and state law, subject to the provisions of this subtitle.

(f) (e) The board may supplement the salary of the commissioner.

Amendment on Third Reading - Chisum

Amend S.B. 307 on third reading as follows:

(1) On page 1, line 20 after “Commissioner” insert: The salary may not exceed a multiple of 1.5 times the salary of the governor, from funds appropriated to the department.

Funds from other sources are not limited by this subsection.

The amendments were read.

Senator Carriker moved to concur in the House amendments to S.B. 307.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1245 WITH HOUSE AMENDMENT

Senator Carriker called S.B. 1245 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Cavazos

Amend S.B. 1245 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to rate regulation of medical professional liability insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. **RATE STANDARDS.** Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) The State Board of Insurance shall consider the impact of risk management courses taken by physicians and health care providers in this state in approving rates under this article.

(c) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(d) [(c)] Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 2. Subsection (b), Section 4B, Article 5.15-1, Insurance Code, is amended to read as follows:

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. ~~[A decision of the State Board of Insurance under this subsection may not be appealed.]~~

SECTION 3. Section 3, Article 5.15-4, Insurance Code, is amended to read as follows:

Sec. 3. **AMOUNT OF PREMIUM DISCOUNT.** The State Board of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. Each insurer shall file proposed premium discounts and any ~~[The board shall base the approved~~

discounts upon] loss and statistical data required by board rule. The insurer has the burden of demonstrating to the board, by a preponderance of the evidence, that the proposed premium discount is adequate to reflect [provided by each insurer and on] the reduction in the insurer's liability exposure based on the state's indemnification of the first \$100,000 or \$25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional. The information required to be filed with the State Board of Insurance under this section is public information and shall be made available to the public on written request.

SECTION 4. (a) This Act takes effect September 1, 1991.

(b) The changes in the law made by this Act apply only to rates and premium discounts for policies delivered, issued for delivery, or renewed on or after January 1, 1992. Rates and premium discounts for policies delivered, issued for delivery, or renewed before January 1, 1992, are governed by the law that existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to S.B. 1245 by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2495 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2495, Relating to the terms served by members of the Agricultural Diversification Board, the execution of the Texas Linked Deposit Program, and the amount of funds that may be placed in the Texas Linked Deposit Program, and other rural development initiatives.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2495 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2495 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 1340 WITH HOUSE AMENDMENTS

Senator Parker called S.B. 1340 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Alexander

Amend S.B. 1340 by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to recycling programs and incentives; creating offenses and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapters N, O, P, and Q to read as follows:

SUBCHAPTER N. RECYCLING PROGRAMS; DISPOSAL FEES

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that can serve as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of comparing the total costs of products over their lifetimes based on initial maintenance costs which include the initial cost, maintenance costs, and other related expenses.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the department described in Section 361.427.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial reuse.

(9) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(10) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(11) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Sec. 361.422. STATE RECYCLING GOAL. (a) It is the state's goal to achieve by January 1, 1994, the recycling of at least 40 percent of the state's total municipal solid waste stream.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) By January 1, 1992, the department shall establish rules and reporting requirements through which progress toward achieving the established recycling goals can be measured. The rules may take into consideration those ongoing community recycling programs where substantial progress has already been achieved. The department may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

Sec. 361.423. MARKET DEVELOPMENT STUDY AND IMPLEMENTATION PROGRAM. (a) The General Land Office, in cooperation with the department, the Texas Water Commission, the Railroad Commission of Texas, and the Texas Department of Commerce, shall initiate, coordinate, and conduct a comprehensive market development study that quantifies the potential benefits and costs of recycling in order to provide the groundwork for an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The study shall:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies; and
(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas.

(c) In preparing the study, the responsible agencies may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) The General Land Office shall develop and carry out a program designed to implement the comprehensive statewide strategy established pursuant to Subsection (b)(4).

(e) The initial study required by this section shall be submitted to the 73rd Legislature not later than January 15, 1993. This subsection expires January 16, 1993.

Sec. 361.424. RECYCLING AWARENESS CAMPAIGN. In order to raise public awareness and involvement in recycling and to increase markets for recycled products, the General Land Office shall develop and implement a statewide promotional campaign which includes:

- (1) public service announcements on radio and television;
- (2) a statewide information network to inform the public of recycling opportunities in their region of the state; and
- (3) efforts to encourage business, industry, and government to purchase recycled products.

Sec. 361.425. GOVERNMENTAL ENTITY RECYCLING. (a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

- (1) in cooperation with the State Purchasing and General Services Commission or the department establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, high-grade office paper, and corrugated cardboard;
- (2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;
- (3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and
- (4) establish educational and incentive programs to encourage maximum employee participation.

(b) The department by order shall exempt a school district or a city with a population of less than 5,000 from compliance with this section if the department finds that compliance would work a hardship on the district or the city. The department shall adopt rules for administering this subsection.

(c) State agencies shall comply with this section not later than September 1, 1991. Other entities listed in Subsection (a) shall comply not later than September 1, 1993. This subsection expires September 2, 1993.

Sec. 361.426. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED PRODUCTS. (a) A state agency, state court, or judicial agency not subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
(2) encourage the use of products made of recycled materials; and
(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The department by order shall exempt a school district or a city with a population of less than 5,000 from compliance with this section if the department finds that compliance would work a hardship on the district or the city. The department shall adopt rules for administering this subsection.

(e) State agencies shall comply with this section not later than September 1, 1991. Other entities listed in Subsection (a) shall comply not later than September 1, 1993. This subsection expires September 2, 1993.

Sec. 361.427. SPECIFICATIONS FOR RECYCLED PRODUCTS. (a) The department, in consultation with the State Purchasing and General Services Commission, shall promulgate rules to establish guidelines which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste.

(c) The guidelines established under this section shall be classified by types of products.

(d) The department's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Section 3259 et seq.).

Sec. 361.428. YARD WASTE. (a) A person may not dispose of yard waste or accept yard waste for disposal at a Type I, Type II, Type III, or Type IV landfill unless:

(1) the yard waste is separated from other municipal solid waste;
(2) the landfill provides and maintains a separate yard waste composting facility and either composts all yard waste it accepts or contracts for the composting elsewhere of yard waste collected at the landfill; and

(3) the compost is used by the operator of the landfill or other facility as part of the final vegetative cover of the landfill, for soil conditioning material, or other appropriate use.

(b) The department by rule shall establish standards for composting operations and, in consultation with the Department of Agriculture, establish standards for the utilization of compost that is sold commercially. A generator of any compost that does not meet the standards established by the department under this section shall reprocess or dispose of the material in a manner approved by the department.

(c) State agencies and political subdivisions responsible for the construction, maintenance, or landscaping of public land shall give preference to the use of compost in land construction, maintenance or landscaping activities, including highway construction, and other projects such as park, golf course, and athletic field projects.

(d) A landfill is exempted from this section if one of the following apply:

(1) it imposes an undue hardship on cities with a population of 10,000 or less; or

(2) it is a Type IV landfill which the department has determined is serving the public interest by accepting yard waste for fill of an existing sand, gravel, or dirt pit.

Sec. 361.429. HOUSEHOLD HAZARDOUS WASTE. The department shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for cities, counties, or regions. The department's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

Sec. 361.430. NEWSPRINT RECYCLING PROGRAM. (a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The department shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

- (1) 10 percent by the end of the calendar year 1993;
- (2) 20 percent by the end of the calendar year 1997; and
- (3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the commissioner which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(2) The commissioner shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the commissioner determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the department may adopt mandatory enforcement measures.

Sec. 361.431. INTRASTATE TRANSPORTATION OF RECYCLABLE MATERIALS. (a) The Railroad Commission of Texas shall set intrastate rates for motor carriers transporting recyclable materials and in setting such rates may consider interstate rates for transportation of recyclable materials which are assessed by interstate motor carriers providing the same kind, class, and quality of service; provided, however, that no intrastate rates or transportation of recyclable materials shall be prescribed which are shown to result in predatory pricing as defined by Section 4(a)(5) of Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes). Evidence of interstate services and interstate rates shall be presented at any rate proceeding before the railroad commission relating to recyclable materials in accordance with the railroad commission's applicable rules of procedure and evidence, as well as in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The railroad commission may issue common carrier motor carrier certificates, specialized motor carrier certificates, or contract carrier permits to those persons who desire to engage in the business of transporting recyclable materials for hire over the highways of this state; provided, however, that any such person shall file an application for any such certificate or permit in accordance with the applicable provisions of Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), and the pertinent procedural rules of the railroad commission and be required to meet all burdens of proof imposed by law on applicants for such certificates or permits. In determining whether to issue a certificate or permit, in addition to all other issues required by law to be considered, the railroad commission may consider that efficient transportation of recyclable materials is essential to development of an effective statewide recycling program; provided, however, that no such certificate or permit shall be granted where it is shown by the record as a whole that available existing intrastate carriers are providing reasonably adequate transportation of recyclable materials.

[Sections 361.432 to 361.450 reserved for expansion]

SUBCHAPTER O. LEAD-ACID BATTERIES

Sec. 361.451. LAND DISPOSAL PROHIBITED. (a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

(1) a battery retailer or wholesaler;

(2) a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

(1) a battery wholesaler or a secondary lead smelter, or an agent thereof;

(2) a battery manufacturer for delivery to a secondary lead smelter;

or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided in this section.

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

(1) accept from customers, if offered, at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased; and

(2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

Sec. 361.453. INSPECTION OF BATTERY RETAILERS. The department shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the department may inspect any place, building, or premises governed by Section 361.452. Authorized employees of the department may issue warnings and citations to persons who fail to comply with the requirements of Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to a fine of \$100 per day.

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Sec. 361.455. PENALTY. Any violation of this subchapter is a Class C misdemeanor. Each battery improperly disposed of constitutes a separate violation and offense.

Sec. 361.456. ENFORCEMENT. The department shall adopt rules necessary to enforce the provisions of this subchapter.

[Sections 361.457-361.470 reserved for expansion]

SUBCHAPTER P. WASTE TIRE RECYCLING PROGRAM

Sec. 361.471. DEFINITIONS. In this subchapter:

(1) "Fund" means the waste tire recycling fund.

(2) "Mobile tire shredder" means equipment mounted on wheels or skid-mounted and hauled from place to place to split, shred, or quarter used or scrap tires.

(3) "Scrap tire" has the meaning assigned by Section 361.112.

(4) "Waste tire facility" means a facility permitted by the department under Section 361.112 at which scrap tires are collected or deposited and shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery.

(5) "Waste tire processor" means:

(A) a waste tire facility; or

(B) a mobile tire shredder that splits, shreds, or quarters tires and deposits the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at:

(i) a waste tire storage facility registered by the department under Section 361.112; or

(ii) a waste tire facility.

(6) "Waste tire transporter" means a person who collects and transports used or scrap tires for storage or disposal.

(7) "Weighed tire" means a unit of weight for shredded scrap tires that is equal to 18.7 pounds.

Sec. 361.472. WASTE TIRE RECYCLING FEES. (a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee of \$2 for each new tire of the following types sold:

(1) an automobile tire with a rim diameter of 15 inches or less;

(2) a light truck tire with a rim diameter of not less than 16 inches or more than 19 inches; and

(3) a truck tire with a rim diameter of 20 inches or more.

(b) A dealer required to collect a fee under this section may retain 2-1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day of the month following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be open for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

Sec. 361.473. ENFORCEMENT; PENALTIES. (a) A person who does not file a report as provided by Section 361.472 or who possesses a fee collected or payable under that section and who does not remit the fee to the comptroller at the time and in the manner required by that section and rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(b) Chapters 101 and 111-113, Tax Code, and Sections 153.006 and 153.007, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters and sections apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(c) The comptroller may add a penalty of 75 percent of the amount of the fee, penalty, and interest due if failure to file the report or pay the fee when it comes due is attributable to fraud or an intent to evade the application of this section or a rule made under this section or Chapter 111, Tax Code.

Sec. 361.474. DISPOSITION OF FEES AND PENALTIES. Fees and penalties collected under this subchapter shall be deposited in the state treasury to the credit of the waste tire recycling fund.

Sec. 361.475. WASTE TIRE RECYCLING FUND. (a) The waste tire recycling fund is a special account in the general revenue fund.

(b) The department shall administer the fund.

(c) The fund consists of fees and penalties collected under this subchapter, interest on money in the fund, and money from gifts, grants, or any other source intended to be used for the purposes of this subchapter.

(d) The fund may be used only to pay:

(1) waste tire processors that meet the requirements for payment under Section 361.477 and rules adopted under that section;

(2) the department's reasonable and necessary administrative costs of performing its duties under this subchapter in an amount not to exceed six percent of the money annually accruing to the fund; and

(3) the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter in an amount not to exceed two percent of the money annually accruing to the fund.

Sec. 361.476. PRIORITY ENFORCEMENT LIST. The department shall identify unauthorized tire dumps that present an existing or potential threat to public health and safety or to the environment and shall prepare an enforcement list of those dumps, giving priority to dumps for which a responsible party cannot be located.

Sec. 361.477. PAYMENTS TO WASTE TIRE PROCESSORS. (a) The department each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to 85 cents for each weighed tire shredded by the processor during the preceding calendar month.

(b) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the department in accordance with forms prescribed by the department;

(2) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; and

(B) not less than 25 percent of those tires were collected from tire dumps listed on the department's priority enforcement list; and

(3) provide any other information the department determines is needed to accomplish the purposes of this subchapter.

(c) A waste tire processor that in any month exceeds the 25 percent minimum requirement of Subsection (b)(2) shall receive a credit for the amount in excess of 25 percent that may be used to meet the minimum requirement during a later month. The board of health by rule may prescribe the method of applying credits accrued under this subsection.

(d) The board of health by rule shall adopt application and payment procedures and requirements to implement this section.

Sec. 361.478. EVALUATION OF RECYCLING AND ENERGY RECOVERY ACTIVITIES; CERTIFICATION FOR PAYMENT. (a) Beginning June 1, 1995, and every five years after that date, the department shall evaluate according to standards adopted by board of health rule the recycling and energy recovery activities of each waste tire processor that received payment under Section 361.477 during the preceding five years.

(b) After evaluation, the department shall certify as eligible for payment under Section 361.477 during the next five years a waste tire processor that has conducted

or provided for recycling of or energy recovery from tires for which the processor received payment during the preceding five years.

(c) A waste tire processor that receives payment under Section 361.477 during any five-year period and that after evaluation is not certified by the department under Subsection (b) as eligible for payment under Section 361.477 may not receive payment under that section for the next five years.

(d) The board of health by rule may establish a procedure by which a waste tire processor can reestablish eligibility for payment under Section 361.477.

Sec. 361.479. EVIDENCE OF FINANCIAL RESPONSIBILITY. (a) A waste tire storage facility registered by the department under Section 361.112 or a waste tire facility that accepts shredded tires for storage or for processing for recycling, reuse, or energy recovery shall submit to the department evidence of financial responsibility in an amount adequate to assure proper cleanup or closure of the facility.

(b) A facility subject to Subsection (a) shall submit to the department an estimate of the total amount of shredded tires measured by weighed tire that the facility will store or process and the estimated cost, using that total amount, of cleaning up or closing the facility.

(c) The department shall evaluate and may amend an estimate submitted under Subsection (b) and by order shall determine for each facility the amount for which evidence of financial responsibility is required.

(d) Evidence of financial responsibility may be in the form of a performance bond, a letter of credit from a recognized financial institution, a trust fund, or insurance for a privately owned facility, or a resolution by the commissioners court or the city council, as appropriate, for a publicly owned facility.

Sec. 361.480. TIRE COLLECTION FEE PROHIBITED. A waste tire transporter or mobile tire shredder may not charge a fee to a wholesale or retail dealer for collecting for delivery to a waste tire facility or for collecting and shredding used or scrap tires accepted for temporary storage by the dealer from purchasers of new tires.

Sec. 361.481. PROHIBITION ON OUT-OF-STATE TIRES. A waste tire processor may not claim payment under Section 361.477 for shredding out-of-state tires.

Sec. 361.482. PROHIBITION ON DISPOSAL OF SHREDDED TIRES IN LANDFILL. A waste tire processor may not dispose of shredded tires in a landfill if the processor has received payment under Section 361.477 for the tires.

Sec. 361.483. CIVIL PENALTY. (a) A person who violates Section 361.481 or 361.482 is liable for a civil penalty of up to \$10,000 for each violation.

(b) The attorney general or the prosecuting attorney in the county in which the alleged violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c) A penalty collected under this section shall be deposited to the credit of the waste tire recycling fund.

Sec. 361.484. RULES. The board of health may adopt rules reasonably necessary to implement this subchapter.

Sec. 361.485. REPORT. Not later than February 1 of each odd-numbered year, the department shall report to the governor and the legislature on the administration of the program established under this subchapter and its effectiveness in cleaning up existing tire dumps and in preventing new dumps.

[Sections 361.486-361.500 reserved for expansion]

SUBCHAPTER Q. DISPOSAL OF NEW SCRAP GYPSUM WALLBOARD

Sec. 361.501. (a) New scrap gypsum wallboard is a recyclable material and may not be placed in a Type 1, Type 2, or Type 3 landfill that is within 75 miles

of a reclamation center, an approved transfer station for a Type 4 landfill, or a Type 4 landfill.

(b) All scrap gypsum wallboard shall be separated from other scrap at the scrap generator's site.

(c) A reclamation center may impose on scrap gypsum wallboard not properly separated from other scrap a surcharge to cover the cost of separation, consistent with the provisions of this chapter.

(d) A reclamation center may not charge a tipping fee for new scrap gypsum wallboard that exceeds the tipping fee charged by a local landfill.

SECTION 2. Section 361.013, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), the [The] department shall charge a fee on solid waste that is disposed of within this state. The fee is 50 cents per ton or 17 cents per cubic yard of compacted solid waste and 10 cents per cubic yard of uncompacted solid waste received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(e) The department may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

SECTION 3. Section 361.112, Health and Safety Code, is amended by amending Subsection (f) and by adding a new Subsection (k) and relettering existing Subsection (k) as Subsection (l) to read as follows:

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by board of health rule. The department may grant an exception to this requirement if the department finds that circumstances warrant the exception. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(k) The department may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

SECTION 4. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. Revenue received by the department under Section 361.013 shall be deposited in the state treasury to the credit of the department. At least half the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

(6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(7) conduct of research to promote the development and stimulation of markets for recycled waste products;

(8) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this chapter.

SECTION 5. Section 363.004, Health and Safety Code, is amended by adding Subdivision (25) to read as follows:

(25) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

SECTION 6. Section 363.064, Health and Safety Code, is amended to read as follows:

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(4) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(5) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; [and]

(6) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(7) establish recycling rate goals appropriate to the area covered by the plan; and

(8) recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;
(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and
(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch.

SECTION 7. Subsection (c), Section 363.092, Health and Safety Code, is amended to read as follows:

(c) The department shall use the planning fund to provide financial assistance to:

(1) local governments and planning regions to develop regional and local solid waste management plans; [and]

(2) public agencies and planning regions to prepare screening, feasibility, and implementation studies; and

(3) local governments and planning regions for costs of developing and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

SECTION 8. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 371 to read as follows:

CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. SHORT TITLE. This chapter may be cited as the Used Oil Collection, Management, and Recycling Act.

Sec. 371.002. FINDINGS. The legislature finds that:

(1) when properly managed, used oil is a valuable energy resource, the reuse of which may make a significant contribution toward energy efficiency and conservation;

(2) recycling used oil to produce fuel requires significantly less energy than is needed to refine crude oil into fuel;

(3) millions of gallons of used oil generated each year by private citizens in the state are not available for recycling because of improper disposal practices and the lack of collection facilities;

(4) although there is a reliable system for the collection and recycling of used oil generated by business and industry, private citizens have only limited access to that system and often dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or marine water;

(5) improper disposal of this used oil is both a significant environmental problem and a waste of a valuable energy resource; and

(6) adequate public funds are required to provide for the proper collection, management, and recycling of used oil.

Sec. 371.003. DEFINITIONS. In this chapter:

(1) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Do-it-yourself (DIY) used oil" means used oil that is generated by a person who changes the person's own automotive oil.

(5) "Generator" means a person whose act or process produces used oil.

(6) "Public used oil collection center" means:

(A) an automotive service facility that in the course of business accepts for recycling small quantities of used oil from private citizens;

(B) a facility that stores used oil in aboveground tanks and in the course of business accepts for recycling small quantities of used oil from private citizens; and

(C) a publicly sponsored collection facility that is designated and authorized by the department to accept for recycling small quantities of used oil from private citizens.

(7) "Reclaiming" means using methods, other than rerefining, to remove insoluble impurities from used oil and making the used oil suitable for further use as a lubricant or petroleum product. The term includes settling, heating, dehydration, filtration, or centrifuging.

(8) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means; or

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil.

(9) "Rerefining" means applying refining processes to used oil to produce high-quality base stocks for lubricants or other petroleum products.

(10) "Used oil" means any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties, but that may be suitable for further use and is recyclable.

[Sections 371.004-371.020 reserved for expansion]

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

Sec. 371.021. PUBLIC EDUCATION. The department shall conduct an education program to inform the public of the need for and benefits of collection and recycling of used oil. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Sec. 371.022. NOTICE BY RETAIL DEALER. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off premises shall post in a prominent place a sign provided by the department informing the public that improper disposal of used oil is prohibited by law. The sign shall also prominently display the toll-free telephone number of the state used oil information center established under Section 371.021.

Sec. 371.023. GRANTS TO LOCAL GOVERNMENTS. (a) The department shall develop a grant program for local governments that encourages the collection, reuse, and recycling of DIY used oil.

(b) A grant may be made for any project approved by the department. The department shall consider for grant assistance any local government project that uses one or more of the following programs:

(1) curbside pickup of containers of DIY used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of DIY used oil;

(3) establishment of publicly operated DIY used oil collection centers at landfills, fire stations, or other public places;

(4) provision of containers and other materials and supplies that can be used to store DIY used oil for pickup or delivery to a used oil collection center in an environmentally sound manner; and

(5) any other activity the department determines will encourage the proper recycling of DIY used oil.

(c) The board by rule shall establish procedures for the application for and criteria for the award of grants under this section.

Sec. 371.024. COLLECTION FACILITIES. (a) All businesses that change motor oil for the public and all appropriate government agencies are encouraged to serve as public used oil collection centers.

(b) A public used oil collection center annually shall:

(1) register with the department; and

(2) report to the department the amounts of used oil collected by the center from the public.

(c) The board shall adopt rules governing the registration of and reporting by public used oil collection centers.

(d) The board by rule shall adopt standards for managing and operating a public used oil collection center.

(e) The department may impose a registration fee in an amount sufficient to cover the cost of registering public used oil collection centers.

Sec. 371.025. LIMITATION OF LIABILITY. (a) A person may not recover from the owner, operator, or lessor of a registered public used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the department.

(b) For purposes of this section, the owner, operator, or lessor of a public used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a public used oil collection center. This section does not apply to grossly negligent activities related to the operation of a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Sec. 371.026. REGISTRATION OF PERSONS TRANSPORTING, MARKETING, OR RECYCLING USED OIL. (a) A person who transports over public highways of this state more than 500 gallons of used oil annually, who

markets more than 500 gallons of used oil annually, or who recycles more than 10,000 gallons of used oil annually shall register annually with the department on forms prescribed by the department and in accordance with board rules.

(b) The department shall develop a registration program for transporters, marketers, and recyclers of used oil.

(c) The board shall adopt rules governing registration and reporting of used oil transporters, marketers, and recyclers. The rules shall require that a used oil transporter, marketer, or recycler:

(1) register annually with the department;

(2) report annually the sources of used oil transported, marketed, or recycled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil;

(3) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil transportation, marketing, or recycling; and

(4) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in transporting, marketing, or recycling used oil.

(d) The board by rule shall adopt reasonable management and safety standards for the transportation, marketing, and recycling of used oil.

(e) The department may impose a registration fee in an amount sufficient to cover the cost of registering used oil transporters, marketers, and recyclers.

(f) A utility or industrial generator of used oil that transports its own used oil from one generator-owned or generator-operated facility to another or that recycles its own used oil for use in its operations is not required to register or report under this section.

Sec. 371.027. GIFTS AND GRANTS. The department may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Sec. 371.028. RULES. The board may adopt any rules necessary to carry out the purposes of this chapter.

[Sections 371.029-371.040 reserved for expansion]

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

Sec. 371.041. ACTIONS PROHIBITED. (a) A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

(b) A person commits an offense if the person:

(1) intentionally discharges used oil into a sewer, drainage system, septic tank, surface or ground water, watercourse, or marine water;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills;

(3) intentionally mixes or commingles used oil with hazardous waste or other hazardous substances or PCBs;

(4) transports, markets, or recycles used oil within the state without first complying with the registration requirements of Section 371.026 and rules adopted under that section;

(5) applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment; or

(6) violates an order of the department to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity.

(c) It is an exception to the application of Subsection (b) if a person unknowingly disposes into a landfill any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(d) It is an exception to the application of Subsection (b)(2) if the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is

incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

Sec. 371.042. CRIMINAL PENALTIES. (a) Except as provided by Subsection (b), an offense under Section 371.041 is a Class C misdemeanor.

(b) If it is shown on the trial of an offense under Section 371.041 that the defendant has previously been convicted of an offense under Section 371.041, the offense is a Class A misdemeanor.

Sec. 371.043. CIVIL PENALTY. (a) Except as provided by Subsection (c), a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to pay a fee under Section 371.062 or failure to file a report under Section 371.024 or 371.026.

(d) The department, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Sec. 371.044. INJUNCTIVE RELIEF. (a) If it appears that a violation or threat of violation of this chapter or any rule or order adopted under this chapter has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the department, the local government, or the state may bring suit in district court for injunctive relief to restrain the violation or the threat of violation.

(b) In a suit for injunctive relief, the court may grant any injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

Sec. 371.045. VENUE. A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

- (1) the county in which the defendant resides;
- (2) the county in which the violation or threat of violation occurs; or
- (3) Travis County.

[Sections 371.046-371.060 reserved for expansion]

SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

Sec. 371.061. USED OIL RECYCLING FUND. (a) The used oil recycling fund is in the state treasury.

(b) The fund consists of:

- (1) fees collected under Sections 371.024, 371.026, and 371.062;
- (2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and
- (3) gifts, grants, donations, or other financial assistance the department is authorized to receive under Section 371.027.

(c) Except as provided by Subsection (d), the department may use money in the fund for purposes authorized by this chapter, including:

- (1) public education;
- (2) grants;
- (3) registration of used oil collection centers, used oil transporters, used oil marketers, and used oil recyclers; and
- (4) administrative costs of implementing this chapter.

(d) The department shall transfer 25 percent of the fees collected under Section 371.062 to the Texas Water Commission for the sole purpose of restoring the environmental quality of those sites in the state that the commission has identified as having been contaminated through improper used oil management and for which other funds from a potentially responsible party or the federal government are not sufficient. This subsection expires on January 1, 1997.

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. The term does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state.

(2) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(3) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil.

(b) An oil manufacturer or importer who makes a first sale of automotive oil is liable for a fee.

(c) Each oil manufacturer or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale for four years from the date of sale; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(d) Records required to be maintained under Subsection (c) shall be available for inspection by the comptroller at all reasonable times.

(e) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(f) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(g) The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. The department shall monitor the unobligated balance of the used oil recycling fund and shall adjust the fee rate to meet expenditure requirements of the used oil recycling program and to maintain an appropriate fund balance. The fee imposed under this section may not exceed five cents per quart or 20 cents per gallon of automotive oil. On or before September 1 of each year, the department and the comptroller jointly shall issue notice of the effective fee rate for the next fiscal year.

(h) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(i) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling fund.

SECTION 9. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.291 to read as follows:

Sec. 3.291. PURCHASE OF RECYCLED OIL. The commission, all state agencies, and all state agency employees who purchase motor oil and other automotive lubricants for state-owned vehicles shall give preference to motor oils and lubricants that contain at least 25 percent recycled oil, the cost to the state and the quality being comparable to new oil and lubricants.

SECTION 10. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.53 to read as follows:

Sec. 11.53. ENVIRONMENTAL EDUCATION. (a) The commissioner of education shall foster the development and dissemination of educational activities and materials which will assist Texas public school students, teachers, and administrators in the perception, appreciation, and understanding of environmental principles and problems. In order to do so, the commissioner shall:

(1) encourage the integration of environmental topics into the regular curriculum, where appropriate;

(2) encourage the Central Education Agency to coordinate state, federal, and other funding sources to develop and disseminate to school districts instructional materials for use in environmental education, with special concern given to the ecological systems of Texas and the ways human beings depend on and interact with the systems;

(3) encourage the Central Education Agency to coordinate state, federal, and other available funding sources to develop and deliver teacher inservice programs, including summer seminars and institutes, on various aspects of environmental pollution and conservation;

(4) collect, analyze, evaluate, and disseminate to school districts information about environmental curriculum materials, validated projects, and other successful programs;

(5) solicit, receive, and expend funds which may become available through federal grants under any national environmental education programs or from other public or private sources;

(6) prepare an annual status report on environmental education activities and deliver it to the legislature and the governor on or before September 1 of each year.

(b)(1) To assist in the development of environmental education curricula, materials, and teacher training programs, the commissioner of education shall establish an advisory committee on environmental education.

(2) Members of the advisory committee shall include the following persons or their designees:

(A) the commissioner of education, who serves as chairperson;

(B) the commissioner of the Department of Health;

(C) the commissioner of the General Land Office;

(D) the executive director of the Texas Water

Commission;

(E) the executive director of the Texas Air Control

Board;

(F) the director of the Governor's Energy Office;

(G) the executive director of the Water Development

Board; and

(H) the Commissioner of the Department of

Agriculture.

(3) The commissioner of education shall also appoint additional members who represent statewide teacher and education organizations, statewide environmental organizations, and business and industry.

SECTION 11. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.079 to read as follows:

Sec. 61.079. WASTE MANAGEMENT DEGREE PROGRAMS AND RESEARCH. (a) The board shall initiate and encourage the development of and by rule shall adopt standards for the approval of elective courses in waste management and waste management degree programs at institutions of higher education.

(b) For purposes of this section, a waste management degree program includes:

(1) a single-discipline degree program with an emphasis on solid waste management and recycling; or

(2) an interdisciplinary degree program that reflects business, political, economic, public affairs, legal, environmental, or engineering perspectives on waste management and recycling.

(c) The board shall encourage institutions of higher education:

(1) to develop graduate or research programs involving research and development of innovative products made from recycled materials; and

(2) as part of a statewide recycling extension service, to provide professionals in recycling fields with technical data and information developed by those programs.

SECTION 12. Section 143.003, Education Code, is amended to read as follows:

Sec. 143.003. **PRIORITY RESEARCH AREAS.** The technology program may provide support for faculty members to conduct research in areas determined by an advisory panel appointed by the coordinating board. Initial research areas shall include: agriculture, biotechnology, biomedicine, energy, environment, materials science, microelectronics, aerospace, marine science, aquaculture, telecommunications, [and] manufacturing science, and recycling. The advisory panel may add or delete priority research areas as the panel considers warranted.

SECTION 13. Subsection (b), Section 481.295, Government Code, is amended to read as follows:

(b) In determining eligible projects, the advisory board and the department shall give special preference to projects that have the greatest likelihood of commercial success, specifically including but not limited to projects in the areas of agriculture, biotechnology, biomedicine, energy, materials science, microelectronics, aerospace, marine science, aquaculture, telecommunications, manufacturing science, recycling, and other priority research areas as provided in Section 143.003, Education Code. The department and the advisory board further shall give consideration to grantees under the small business innovation research program established under 15 U.S.C. Section 638 as well as to Texas companies formed to commercialize research funded at least in part with state funds.

SECTION 14. Subsection (c), Article 6674i-1, Revised Statutes, is amended to read as follows:

(c) In comparing bids submitted for road construction that require paving, the department shall [may] give a preference to bids the paving materials portion of which includes the use of rubberized asphalt paving made from scrap tires by a facility in this state if the cost of those materials based on life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost based on life-cycle cost benefit analysis of alternative paving materials for the same job.

SECTION 15. Chapter 1, Title 116, Revised Statutes, is amended by adding Articles 6674i-2 and 6674i-3 to read as follows:

Art. 6674i-2. RECLAIMED ASPHALT PAVEMENT

Sec. 1. In this article:

(1) "Reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department.

(2) "Road" means a paved road in the state highway system.

(3) "Department" means the State Department of Highways and Public Transportation.

Sec. 2. (a) The department has title and shall retain title to all reclaimed asphalt pavement from roads in the state highway system, except as otherwise provided by this subsection. The department shall maximize the use of reclaimed asphalt pavement. The department shall, when feasible, remove and recycle hot mix asphalt from any road being repaved. The department may transfer title to reclaimed asphalt pavement to another governmental entity for use on roads.

(b) The department shall ensure that the reclaimed asphalt pavement be kept as free as possible from contamination by non-asphaltic materials during its removal, transportation, and storage.

(c) All state agencies, departments, and commissions shall give precedence for the use of lands under their control for the storage of reclaimed asphalt products when environmental and economic constraints permit.

(d) The department shall keep a public record of the location and amount of state-owned reclaimed asphalt products.

(e) The department shall, not later than January 1, report annually to the legislative audit committee on the department's use of recycled asphalt pavement.

Art. 6674i-3. FOSSIL FUEL COMBUSTION RECYCLED MATERIAL

Sec. 1. USE OF FLY ASH AND BOTTOM ASH ARISING FROM COMBUSTION OF COAL AND OTHER FOSSIL FUELS. The design standards, guidelines, and specifications of the State Department of Highways and Public Transportation, counties, and municipalities shall require that contract specifications for road construction projects allow for the use of fly ash and bottom ash arising from combustion of coal or other fossil fuels used for paving, bridge construction, and other appropriate road construction unless such use is found to be technically inappropriate in accordance with sound engineering principles or increases the cost of such construction.

Sec. 2. COMPLIANCE. Each procuring state, county, and municipal entity shall revise its design standards, guidelines, and specifications for road construction projects, if necessary to comply with this article, by January 1, 1992.

SECTION 16. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Section 3.211 and adding Section 3.212 to read as follows:

Sec. 3.211. PREFERENCE FOR RUBBERIZED ASPHALT PAVING. The commission may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material, if the cost as determined by life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials.

Sec. 3.212. PREFERENCE FOR RECYCLED PRODUCTS. (a) The commission and state agencies shall give preference to a product made of recycled materials in purchases made under this Act if the product meets state specifications as to quantity and quality.

(b) The commission regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials; and

(2) encourage the use of products made of recycled materials.

(c) In developing new procedures and specifications, the commission shall encourage the use of recycled products and products that may be recycled or reused.

SECTION 17. Subchapter A, Chapter 252, Local Government Code, is amended by adding Section 252.003 to read as follows:

Sec. 252.003. APPLICATION OF OTHER LAW. The purchasing requirements of Section 361.426, Health and Safety Code, apply to municipal purchases made under this chapter.

SECTION 18. Subchapter A, Chapter 262, Local Government Code, is amended by adding Section 262.005 to read as follows:

Sec. 262.005. APPLICATION OF OTHER LAW. The purchasing requirements of Section 361.426, Health and Safety Code, apply to county purchases made under this chapter.

SECTION 19. Section 271.006, Local Government Code, is amended to read as follows:

Sec. 271.006. COMPLIANCE WITH OTHER REQUIREMENTS. (a) In entering into the contract, a municipality must comply with the requirements of Chapter 252 and a county must comply with the requirements of Subchapter C, Chapter 262. However, the municipality or county is not required to submit to a referendum the question of entering into the contract.

(b) The purchasing requirements of Section 361.426, Health and Safety Code, apply to a purchase by a governmental agency under this chapter.

SECTION 20. Section 361.020, Health and Safety Code, is amended to read as follows:

Sec. 361.020. STATE SOLID WASTE PLANS. (a) The department shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall [may] develop a strategic state solid waste plan for solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed. [The department shall update its plan at least once every five years or more often if required by federal law.]

(b) A strategic plan shall, for the kinds of waste under the jurisdiction of the agency preparing the plan, identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within state times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 for the kinds of waste under the jurisdiction of the agency preparing the plan. [In developing a solid waste plan for solid waste under its jurisdiction, the department shall consider the preference of municipal solid waste management methods under Section 361.022.]

(c) A strategic plan shall include a short-range planning period of not more than five years, an intermediate planning period of not more than 10 years, and a long-range planning period of 11 years or longer.

(d) Each agency in preparing its strategic plan shall consult with:

(1) the agency's waste minimization, recycling, or reduction division;

(2) the waste reduction advisory committee; and

(3) the interagency coordinating council.

(e) A strategic plan shall be updated every two years. Each agency continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the department or the commission adopts its strategic [solid waste] plan or makes significant amendments to the plan, the Texas Air Control Board

must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

SECTION 21. Section 361.021, Health and Safety Code, is amended by adding Subsections (f)-(i) to read as follows:

(f) The council shall assist the department and the commission in preparing strategic state solid waste management plans required by Section 361.020.

(g) The council shall coordinate efforts to develop and update its member agency management information systems to improve access to high-level planning information.

(h) Not later than February 1 of each odd-numbered year, the council shall report to the legislature on:

(1) the status of its member agencies in meeting stated agency goals;
(2) documented efforts to implement the state's preferred waste management methods as stated in Sections 361.022 and 361.023;

(3) local, regional, interstate, and international waste management planning concerns of interest to the state;

(4) the coordination of federal mandates with state waste management plans; and

(5) new waste management issues.

(i) The council may obtain assistance in preparing its reports from the staffs of its member agencies.

SECTION 22. The Texas Department of Health and the Texas Water Commission each shall submit an updated strategic solid waste management plan as required by Section 19 of this Act not later than January 1, 1992.

SECTION 23. (a) Section 361.428, Health and Safety Code, as added by this Act, applies only to the disposal of yard waste in a Type I landfill on or after January 1, 1993, and to the disposal of yard waste in a Type II, III, or IV landfill on or after January 1, 1994.

(b) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires shredded on or after April 1, 1992. The change in law made to Section 361.112(f), Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

(c) Not later than January 1, 1992, the Railroad Commission of Texas shall adopt the rates required by Section 361.431, Health and Safety Code, as added by this Act.

(d) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act.

(e) The change in law made by Section 361.112(k), Health and Safety Code, as added by this Act, applies to an application for registration or a permit under Section 361.112 that is pending on, or submitted to the Texas Department of Health on or after January 1, 1992. A facility required to present evidence of financial responsibility under Section 361.479, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on January 1, 1992, shall comply with Section 361.479 not later than March 1, 1992.

(f) Subsection (c), Article 6674i-1, Revised Statutes, and Sections 3.211 and 3.212, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended or added by this Act, apply only to bids submitted on or after the effective date of this Act to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission. A bid submitted before that date is governed by the law in effect at the time the bid was submitted, and the former law is continued in effect for that purpose.

(g) The requirements of Article 6674i-2, Revised Statutes, as added by this Act, relating to recycled asphalt pavement does not affect a contract existing between the State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

(h) Nothing in this Act shall influence or require a preference for one type of pavement design over another.

SECTION 24. (a) Except as provided by Subsections (b) and (c), this Act takes effect September 1, 1991.

(b) Subchapter C, Chapter 371, Health and Safety Code, as added by this Act, takes effect April 1, 1992, and applies only to an offense that occurs on or after April 1, 1992. For purposes of this subsection, an offense is committed on or after April 1, 1992, if any element of the offense occurs on or after that date.

(c) Section 3.291, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, takes effect January 1, 1993.

(d) Section 371.022, Health and Safety Code, as added by this Act, applies on or after April 1, 1992, to a dealer who is subject to the requirements of that section.

(e) Section 371.026, Health and Safety Code, as added by this Act, applies only to a person who transports, markets, or recycles used oil on or after April 1, 1992.

(f) Section 371.062, Health and Safety Code, as added by this Act, applies only to a first sale of automotive oil that occurs on or after January 1, 1992.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Marchant

Amend C.S.S.B. 1340 as follows:

1. Amend Section 1 by deleting Subchapter Q in its entirety (i.e., delete all language beginning on line 26 of page 24 through the end of line 13 on page 25).
2. On line 1 of page 5, after "compost", insert "scrap gypsum".

Amendment - Saunders

(1) Amend C.S.S.B. 1340, pages 9-10 by deleting the language of Section 361.428 and inserting the following language in its place:

The Municipal Solid Waste Management and Resource Recovery Advisory Council of the department shall develop recommendations to the 73rd Legislature regarding the development of a state composting program. In developing these recommendations, the council shall, at a minimum, consider:

- 1) the development of local yard waste separation programs;
- 2) the commercial application of composting activities;
- 3) the potential beneficial uses of compost; and
- 4) the necessary changes to existing law and regulations required to facilitate conversion of yard waste to compost.

The department shall put in place a composting program that is capable of achieving at least a fifteen percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(2) Amend C.S.S.B. 1340, on page 48, line 25 after "department" strike "shall" and insert "may".

(3) Amend C.S.S.B. 1340, on page 55, lines 8-12, strike subsection (a) of section 23 and renumber accordingly.

Amendment - McCollough

Amend C.S.S.B. 1340 as follows:

(1) On page 42, line 18, add the following sentence:

"This term does not include sales of automotive oils for resale to or use by vessels engaged in foreign or interstate commerce."

Amendment - Williamson

Amend C.S.S.B. 1340, Section 1, by deleting Sec. 361.431 in its entirety and substitute the following in lieu thereof:

Sec. 361.431. INTRASTATE TRANSPORTATION OF RECYCLABLE MATERIALS. (a) The Railroad Commission of Texas shall set maximum intrastate rates for motor carriers transporting recyclable materials and shall set such maximum rates at a level which is comparable to interstate rates for transportation of recyclable materials which are assessed by interstate motor carriers providing the same kind, class, and quality of service. Evidence of interstate services and interstate rates shall be presented at any rate proceeding before the railroad commission relating to recyclable materials in accordance with the railroad commission's applicable rules of procedure and evidence, as well as in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The railroad commission shall issue limited common carrier certificates, limited specialized motor carrier certificates or contract carrier permits to those persons who desire to engage in the business of transporting recyclable materials for hire over the highways of this state. The railroad commission shall adopt simplified rules for the granting of such limited certificates or permits of recyclable materials for hire within 120 days of the effective date of this Act. Such rules shall provide for the issuance of such permits upon the showing of fitness, public necessity and the ability to meet requisite safety standards by the applicant. In considering the issue of public necessity, the railroad commission shall consider that efficient transportation of recyclable materials is essential to development of an effective statewide recycling program.

The amendments were read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendments to S.B. 1340 by a viva voce vote.

HOUSE BILL 2783 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2783, Relating to designating Farm-to-Market Road 390 as a scenic highway.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2783 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2783 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 879 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 879, Relating to the content of a voter registration application and to the processing of certain applications.

The bill was read second time.

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 879** by striking SECTION 1 and substituting the following:

SECTION 1. Section 13.072(d), Election Code, is amended to read as follows:

(d) If an application clearly indicates that the applicant resides in another county, the registrar shall forward the application to the other county's registrar not later than the second day after the date the application is received and, if the other county is not contiguous, shall deliver written notice of that action to the applicant not later than the seventh day after the date the application is received. The date of submission of a completed application to the wrong registrar is considered to be the date of submission to the proper registrar for purposes of determining the effective date of the registration.

The committee amendment was read and was adopted by a viva voce vote.

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 879** as follows:

On page 2, delete Section 2 and renumber subsequent sections.

On page 3 on line 2, insert the following language after the word and: "a resident of the county and".

On page 3 delete subsection 2, lines 7, 8, 9 and renumber subsequent sections.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 879 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 879 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2277

Senator Moncrief called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2277 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on H.B. 2277 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Moncrief, Chair; Brooks, Harris of Tarrant, Krier, Lucio.

HOUSE BILL 1629 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1629, Relating to an exemption from penalties and interest on property taxes for military personnel in the Persian Gulf.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1629 ON THIRD READING

Senator Moncrief moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1629 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 2454 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2454, Relating to the regulation of transporting of oil field equipment incidental and directly in connection with the performance of oil field services.

The bill was read second time.

Senator Henderson offered the following amendment to the bill:

Amend C.S.H.B. 2454 as follows:

Strike Section 2 of the bill and renumber the subsequent sections appropriately.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2454 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2454 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1426 ON SECOND READING

Senator Harris of Dallas asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1426, Relating to certain private club registration permits.

There was objection.

Senator Harris of Dallas then moved to suspend the regular order of business and take up **H.B. 1426** for consideration at this time.

The motion prevailed by the following vote: Yeas 18, Nays 4.

Yeas: Armbrister, Barrientos, Brooks, Ellis, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Montford, Parker, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Bivins, Harris of Tarrant, Rosson, Sibley.

Absent: Brown, Carriker, Dickson, Glasgow, Green, Haley, Moncrief, Ratliff, Turner.

The bill was read second time.

Senator Harris of Dallas offered the following committee amendment to the bill:

Amend **H.B. 1426**, SECTION 2, page 2, line 16, by striking subsection "d" and substituting in its place a new subsection "d" to read as follows:

(d) A permit holder who has elected to restrict the holder's authorized activities under the permit as provided by Section 32.01(b) of this code shall pay a fee for an original permit of \$1500 and thereafter an annual fee of \$1500. [All fees collected pursuant to this section shall be deposited in the general revenue fund.]

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Harris of Dallas and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Harris of Tarrant asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1426 ON THIRD READING

Senator Harris of Dallas moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1426** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 18, Nays 4.

Yeas: Armbrister, Barrientos, Brooks, Ellis, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Montford, Parker, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Bivins, Harris of Tarrant, Rosson, Sibley.

Absent: Brown, Carriker, Dickson, Glasgow, Green, Haley, Moncrief, Ratliff, Turner.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Harris of Tarrant, Montford, Rosson and Sibley asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2111 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2111, Relating to the transfer of the fund balances of certain occupational regulatory agencies.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2111 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2111** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2578 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2578, Relating to the retention by the custodian of a county treasury of a percentage of fees collected for the state under certain provisions of the Code of Criminal Procedure.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2578 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2578** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**MOTION TO PLACE
HOUSE BILL 2605 ON SECOND READING**

Senator Tejeda moved to suspend the regular order of business to consider **H.B. 2605** on its second reading and passage to third reading.

H.B. 2605, relating to continuation of benefits for the surviving spouses of certain deceased state employees.

On motion of Senator Tejeda and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 1503 ON SECOND READING**

Senator Armbrister asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1503, Relating to the regulation of a nursing pool and the establishment of standards for the service provided by a nursing pool to a licensed health care facility; providing penalties.

There was objection.

Senator Armbrister then moved to suspend the regular order of business and take up **C.S.H.B. 1503** for consideration at this time.

The motion was lost by the following vote: Yeas 14, Nays 10, Present-not voting 3. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Barrientos, Brooks, Brown, Ellis, Green, Harris of Tarrant, Henderson, Johnson, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Bivins, Dickson, Harris of Dallas, Krier, Leedom, Lyon, Parker, Rosson, Sibley, Turner.

Present-not voting: Haley, Lucio, Montford.

Absent: Carriker, Glasgow, Moncrief, Ratliff.

(Senator Harris of Dallas in Chair)

HOUSE BILL 1107 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1107, Relating to imposition of standby fees by certain water districts.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1107 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1107 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Barrientos.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1986 ON SECOND READING

Senator Brooks asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1986, Relating to the imposition of fees on industrial solid waste and hazardous waste generators, permit applicants, and operators of hazardous waste management facilities.

There was objection.

Senator Brooks then moved to suspend the regular order of business and take up H.B. 1986 for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Dickson, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Montford, Rosson, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Green, Parker.

Absent: Carriker, Glasgow, Lyon, Moncrief, Ratliff, Sibley, Turner.

The bill was read second time.

Senator Brooks offered the following substitute amendment for the bill:

Floor Amendment No. 1

Amend H.B. 1986 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. LEGISLATIVE FINDINGS.

The Legislature finds that:

(a) the present mechanisms for funding the state's industrial solid waste and hazardous waste programs do not adequately and equitably support these regulatory efforts;

(b) certain facilities at which hazardous substances have been improperly disposed constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment;

(c) improper management and disposal of products containing hazardous constituents represent a threat of contamination to the water resources of the state;

(d) dependable sources of funds are required to provide for the adequate regulation of industrial solid waste and hazardous waste activities, the remediation of contaminated sites and the control of releases of hazardous substances; and

(e) the financial support of the state's efforts to remediate and control pollution from hazardous substances should be based on the products, services and

economic activities which most clearly represent the sources and causes of contamination.

SECTION 2. PURPOSE.

The legislature declares that it is the policy of this state and the purpose of this Act to:

(a) ensure that sufficient funds are available for the support of a program of industrial solid waste and hazardous waste regulation which protects human health and the environment and is consistent with current federal and state regulatory authority.

(b) supplement available sources of funds to ensure that appropriate removal and remedial action are undertaken at sites at which hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action;

(c) enable the state to assist local governments or other concerns in the proper management and disposition of products or materials with hazardous constituents that are related to contaminated disposal sites or other pollution problems; and

(d) relate the state's costs of regulating the management of hazardous substances and remediation and prevention of pollution to particular products containing hazardous substances.

(e) insure that all fee revenue programs authorized under Subchapter D, Chapter 361, Health and Safety Code, clearly support recycling and reuse as desirable methods of waste management.

SECTION 3. Amend the heading of Subchapter D, Chapter 361, Health and Safety Code, to read as follows:

SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION, FACILITY AND MANAGEMENT ~~[DISPOSAL]~~; FEES AND FUNDS

SECTION 4. Sections 361.131-361.135, Health and Safety Code are amended to read as follows:

Sec. 361.131. DEFINITIONS.

In this subchapter:

(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial [hazardous] waste storage, processing, or" ~~or~~ [and] disposal facility includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing including incineration, or [and] disposal [from an offsite generator] for a charge.

(3) ~~[(2)]~~ "Dry weight" means the weight of constituents other than water.

(4) ~~[(3)]~~ "Generator ~~[of hazardous waste]~~ or "Generator" means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) ~~[(4)]~~ "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.) [as of August 26, 1985].

(6) ~~[(5)]~~ "Land disposal" does not include:

(A) the normal application of agricultural chemicals or fertilizers,;

or

(B) ~~disposal of hazardous waste retrieved or created due to remediation of an inactive hazardous waste disposal facility for which a federal or state permit is not issued after August 26, 1985.]~~

(7) [(6)] "Land disposal facility" includes:

- (A) a landfill;
- (B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;
- (C) a waste pile;
- (D) a facility at which land treatment, land farming or a land application process is used; and
- (E) an injection well.

(8) "Non-commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes or disposes of waste generated on site.

(9) [(7)] "Primary metals high volume, low hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents are subject to the criteria for the identification or listing as a hazardous waste under Section 3001(a) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 et seq.) and account for 10 percent or less of its total dry weight volume.

Sec. 361.132. HAZARDOUS AND SOLID WASTE [GENERATION AND FACILITY] FEES FUND.

(a) The hazardous and solid waste [generation and facility] fees fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on generators of industrial solid waste or hazardous waste [generation and permitted or interim status solid waste facilities for processing storing or disposing of hazardous waste] under Section [Sections] 361.134 [and 361.135];

(2) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(3) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for non-commercial and commercial management or disposal of hazardous waste under Section 361.136;

(4) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(5) interest and penalties imposed under Section 361.140 [361.137] for late payment of industrial solid waste and hazardous waste [generation and facility] fees authorized under this subchapter[, and

(3) the commercial hazardous waste fee created under Section 361.138].

(c) Except as provided by Section 361.136(1)(1) [361.138(1)(2)], the commission may use the money in the fund only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) The total amount of [hazardous waste] generation fees and facility fees collected and deposited to the credit of the hazardous and solid waste [generation and facility] fees fund in a fiscal year may not be less than \$4.5 [3.5] million or more than \$6.0 [4.5] million.

(e) Any unobligated balance in the fund in excess of \$1 million at the end of the state fiscal year shall be transferred to the hazardous and solid waste remediation fee fund.

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION [DISPOSAL] FEE FUND. (a) The hazardous and solid waste remediation [disposal] fee fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on the owner or operator of [a] an industrial solid waste or hazardous waste facility for commercial and non-commercial management or disposal of hazardous waste under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 ~~[361.137]~~ for late payment of a ~~[disposal]~~ fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) ~~[the commercial hazardous waste fee created under Section 361.138, and]~~

~~[(5)]~~ the interest received from the investment of this fund, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation ~~[disposal]~~ fee fund; and

(5) monies transferred from other agencies under provisions of this code or grants from any person made for the purpose of remediation of facilities under this chapter.

(c) The commission may use the money collected and deposited to the credit of the fund under this section, including interest credited under Subsection (b)(4)~~[(5)]~~, only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the fund for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance; ~~[and]~~

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended ~~[environmental response law]~~;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(5) expenses concerning the cleanup or removal of a spill, release or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary so that the amount collected each year equals between \$12 million and \$16 million after making payments to counties under Section 361.136(1)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee fund and all sources of revenue to the fund and may adjust the amount of fees collected under Subsection (d) of this section and Section 361.138 of this chapter, within prescribed limits, to maintain an unobligated balance of at least \$5 million and no more than \$25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e) of this section, the unobligated balance in the hazardous and solid waste remediation fee fund shall be determined by subtracting from the cash balance of the fund at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the fund;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the fund; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapters F or I and not currently under contract.

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual [hazardous waste] generation fee prescribed by this section is imposed on each generator [of hazardous waste] who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual [hazardous waste] generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 or more than \$25,000, except that the fee for generation of non-hazardous waste shall not be more than \$1,000 [~~15,000~~].

(d) The commission by rule may [A generator of less than 100 kilograms of hazardous waste each month is] exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered non-hazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Sec. 361.135. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee prescribed by this section is imposed on each person who [facility that] holds one or more permits for the management of Class I industrial solid waste or hazardous waste or is operating a [hazardous] waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged. [In adopting the schedule, the commission shall consider:

(1) the permitted capacity of facilities; and

(2) variations in the costs necessary to regulate different types of facilities.]

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

SECTION 5. Section 361.136, Health and Safety Code is repealed.

SECTION 6. Section 361.138, Health and Safety Code, is redesignated as Section 361.136 and amended to read as follows:

Sec. 361.136 [361.138]. ~~[COMMERCIAL]~~ HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i) ~~[(f)]~~, a ~~[commercial hazardous waste]~~ fee shall be imposed on the owner or operator of a ~~[commercial hazardous]~~ waste storage, processing, or [and] disposal facility for hazardous waste that is managed on site ~~[generated by off-site generators and received by the commercial facility]~~. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for both commercial and non-commercial storage, processing, and disposal of hazardous waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(c) The ~~[commercial]~~ hazardous waste management fee shall be based on the total weight or volume of a hazardous waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The hazardous waste management fee for wastes generated in this state may not exceed \$20 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes ~~[which is in lieu of the commercial hazardous waste fee]~~, shall be established ~~[on an annual basis]~~ by the commission for the storage, processing, ~~[including]~~ incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

- (1) Btu content;
- (2) metals content;
- (3) chlorinated hydrocarbon content; and
- (4) the degree to which the waste fuel is used for energy recovery.

(f) A fee ~~[may not be]~~ imposed on the owner or operator of a commercial hazardous waste~~[:]~~ storage, processing, or [and] disposal facility, for hazardous wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a non-commercial facility ~~[if the commercial facility handles solely industrial solid wastes generated either on site or by an affiliate or wholly-owned subsidiary]~~. For the purpose of this subsection, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a ~~[commercial hazardous]~~ waste~~[:]~~ storage, processing, or [and] disposal facility for the storage of hazardous wastes ~~[that are received from off-site generators if the wastes are stored]~~ for fewer than 90 ~~[60]~~ days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(j)(i) The owner or operator of a ~~[commercial hazardous]~~ waste storage, processing or disposal facility receiving hazardous wastes from out-of-state generators shall be assessed a ~~[the]~~ fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental [a] fee for out-of-state wastes, the commission shall consider:

- (1) factors specified by Section 361.139;
- (2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported hazardous wastes and its associated risks;
- (3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and
- (4) contributions in both fees and taxes paid by generators in this state to the support of the state's hazardous waste regulatory programs.

(k) [(j)] A [The commercial hazardous waste] fee for hazardous wastes that are legitimately reclaimed, reused, or recycled at a [commercial hazardous] waste storage, processing, or [and] disposal facility must be the same for wastes generated in state and out of state.

(l) [(k)] Fees collected under this section shall be credited as follows:

(1) [25 percent of the commercial hazardous waste fee collected from each commercial hazardous waste storage, processing, and disposal facility shall be credited to the hazardous waste generation and facility fees fund;]

[(2)] 25 percent of the commercial hazardous waste fee collected from each commercial [hazardous] waste storage, processing, or [and] disposal facility shall be credited to the hazardous and solid waste [generation and facility] fees fund to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial hazardous waste management facilities; and

(2) of the remaining amount of the commercial hazardous waste fee and of the total amount of the noncommercial hazardous waste fee collected from each waste storage, processing, or disposal facility:

(A) [(3)] 50 percent of each amount [the commercial hazardous waste fee collected from each hazardous waste storage, processing, and disposal facility] shall be credited to the hazardous and solid waste remediation [disposal] fee fund; and

(B) 50 percent of each amount shall be credited to the hazardous and solid waste fees fund.

(m) [(h)] Funds due an affected county under Subsection (1)(1) [(k)(2)] shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

- (1) for methods of computing the dry weight of hazardous waste; and
- (2) for a method to determine or estimate the dry weight of small volumes of hazardous waste delivered to hazardous waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a hazardous waste to be disposed.

SECTION 7. Section 361.139, Health and Safety Code, is amended to read as follows:

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES.

(a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate structure, the commission shall consider the following in establishing the ~~[generation, facility, disposal and commercial hazardous waste]~~ fees authorized under this subchapter:

(1) the variation in risks to the public associated with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for [aqueous hazardous] waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the [adequate] regulation of industrial solid waste and hazardous waste generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities[~~which considers authorized facility capacity~~] and the variation in the cost of regulating different types of facilities;

(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial hazardous waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a [commercial] facility has been or will be assessed a [commercial] hazardous waste fee at other [commercial] facilities under Section 361.136 [361.138]; and

(5) the prevailing rates of similar fees for hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

SECTION 8. Section 361.137, Health and Safety Code is redesignated as Section 361.140 and amended to read as follows:

Sec. 361.140 [361.137]. INTEREST AND PENALTIES.

(a) Interest at an annual rate of 15% of the amount of a fee due under Sections 361.134 through 361.137 [~~361.135, 361.136, or 361.138~~] and unpaid accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of up to \$100 for each day the violation continues for failure to timely submit a properly completed report as required by commission rule under Section 361.035.

(c) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(d) Any penalty collected under this section for late filing of reports shall be deposited in the state treasury to the credit of the hazardous and solid waste remediation [~~disposal~~] fee fund.

SECTION 9. Subchapter D, Chapter 361, Health and Safety Code, is amended by adding a new Section 361.137 to read as follows:

Sec. 361.137. PERMIT APPLICATION FEE. (a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000.

(c) The commission may also establish a fee rate for approval of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than \$2,000.

(d) Application fees collected under this section shall be deposited to the credit of the hazardous and solid waste fees fund.

SECTION 10. Section 5.235(b), Water Code is amended to read as follows:

(b) Except as specifically provided by this section, the fee for filing an application or petition is \$100 plus the cost of any required notice. [~~The fee for a hazardous waste permit application shall be set by the agency at a reasonable amount to recover costs, but in no event shall be less than \$2,000 nor more than \$50,000.~~] The fee for a by-pass permit shall be set by the agency at a reasonable amount to recover costs, but not less than \$100.

SECTION 11. Subchapter D, Chapter 361, Health and Safety Code, is amended by adding a new Section 361.138 to read as follows:

Sec. 361.138. FEE ON THE SALE OF BATTERIES.

(a) In this section "lead-acid battery" means any battery with a capacity of six or more volts which contains lead and sulfuric acid.

(b) A wholesale or retail battery dealer who sells or offers to sell lead-acid batteries not for resale shall collect at the time and place of sale a fee for each lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of \$2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of \$3.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of 5 percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional 5 percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer required to collect a fee under this section may retain 2-1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed 4 percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee fund.

SECTION 12. Section 361.034, Health and Safety Code, is amended to read as follows:

Sec. 361.034. REPORTS. (a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of waste; and

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year.

(b) To develop the reports required under subsection (a), the commission shall adopt rules requiring a person who generates, stores, treats, or disposes of industrial

solid waste or hazardous waste to respond to a periodic survey detailing projections of waste volumes generated and handled, assumptions used as the basis for these projections, disposition, and remaining capacity, concerning a surveyed facility owned or operated by the person.

(c) The report due January 1, 1993, shall also include an evaluation of fees on products authorized under Section 361.138. This evaluation shall include an assessment of the needs of the state for the remediation of contaminated disposal sites identified under Subchapter F, Chapter 361, Health and Safety Code, the sources of contamination at these sites, and the revenues available under existing authority to apply to remediation efforts. The report shall include recommendations for possible additions to products subject to fees under Section 361.138 or other revenue measures which will adequately and equitably apportion the costs of remediation of contaminated sites. In making this evaluation, the commission shall consult with members of the regulated community, other businesses or industries subject to or affected by potential recommendations, and environmental or other public interest organizations.

SECTION 13. This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The substitute amendment was read.

Senator Sims offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to H.B. 1986 by adding a new SECTION 13 to the bill to read as follows, by renumbering current SECTION 13 of the bill as SECTION 14 of the bill, and by renumbering all subsequent sections accordingly:

SECTION 13. Subchapter D, Health and Safety Code, is amended by adding a new Section 361.140 to read as follows:

Sec. 361.140. HAZARDOUS WASTE GENERATION BY CERTAIN MOTOR VEHICLE REPAIR FACILITIES; REGISTRATION FEE. (a) In this section:

(1) "Motor vehicle" means a self-propelled device by which a person or property may be transported upon a public street or highway except a device used exclusively upon stationary rails or tracks.

(2) "Repair facility" means a person who engages in the business of repairing, replacing, or painting the nonmechanical exterior or interior body parts of a motor vehicle, and who, in the course of conducting that business, generates hazardous waste. The term does not include a municipality.

(b) A repair facility shall register annually with the commission as provided by this section and by rules of the commission.

(c) The commission shall adopt a form for application for the registration required by this section and for renewal of the registration and shall furnish a copy of the application form annually to each repair facility. The application shall be sworn, and in it, in addition to other requirements established by the commission, the applicant shall demonstrate compliance with all applicable state and federal ground water and other environmental protection laws and administrative regulations, along with evidence of compliance with other applicable federal, state and local laws and ordinances.

(d) On receipt of the form required by Subsection (b) of this section, together with the required registration fee, the executive director shall issue a non-transferable certificate to the applicant. The certificate shall bear a unique number and shall be renewed annually in the manner prescribed by the executive director. The certificate shall be displayed by the registrant at all times in a location readily visible to the public.

(e) The commission may by rule provide procedures applicable to the revocation, suspension, or surrender of a certificate and to the replacement of a lost certificate. The commission may by rule establish minimum record-keeping requirements for registrants. The commission shall maintain, and make available to the public, a list of persons registered pursuant to this section.

(f) The fee for registration, or renewal of registration pursuant to this section is \$50.

(g) The commission may assess a penalty of not more than \$250 for a violation of this section. The commission shall waive a penalty for failure to register as required by this section if the violation is corrected within 10 days after issuance of notice of violation.

The amendment to Floor Amendment No. 1 was read.

POINT OF ORDER

Senator Leedom raised a Point of Order that Floor Amendment No. 2 was not germane to the bill.

The Presiding Officer ruled that the Point of Order was well-taken and sustained.

Question recurring on the adoption of Floor Amendment No. 1, the amendment was adopted by a viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

(Senator Tejeda in Chair)

HOUSE BILL 1986 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1986 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Bivins, Ellis, Krier, Sibley.

The bill was read third time.

Senator Green offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to H.B. 1986 as follows:

On page 4, line 12 after the word "incineration" add "that was generated on site".

The amendment was read.

On motion of Senator Moncrief, the amendment was tabled by the following vote: Yeas 22, Nays 8.

Yeas: Armbrister, Bivins, Brown, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Johnson, Krier, Leedom, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Truan, Turner.

Nays: Barrientos, Brooks, Green, Henderson, Lucio, Tejeda, Whitmire, Zaffirini.

Absent: Glasgow.

The bill was finally passed by the following vote: Yeas 21, Nays 7.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Haley, Henderson, Johnson, Leedom, Lucio, Moncrief, Montford, Parker, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Bivins, Green, Harris of Tarrant, Krier, Lyon, Ratliff, Whitmire.

Absent: Glasgow, Harris of Dallas, Rosson.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 160, Directing the Senate Enrolling Clerk to delete the phrase "pastoral chemical dependency counseling within the scope of the duties as a religious leader of a congregation," and substitute the phrase "religious leader of a congregation providing pastoral chemical dependency counseling within the scope of his or her duties,".

The House has concurred in Senate amendments to **H.B. 1652** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2252** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2259** by a record vote of 74 Ayes, 61 Noes, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2665** by a record vote of 105 Ayes, 26 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2876** by a non-record vote.

The House has refused to concur in Senate amendments to **H.B. 1657** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Hernandez, Chair; Russell, Ogden, Cook, P. Gallego.

The House has refused to concur in Senate amendments to **H.B. 1314** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Rodriguez, Chair; Blair, Colbert, Luna, Schoolcraft.

The House has refused to concur in Senate amendments to **H.B. 2719** and has requested the appointment of a Conference Committee to consider the differences

between the two Houses. The following have been appointed on the part of the House: P. Gallego, Chair; Denton, Smithee, Schechter, Uher.

The House has refused to concur in Senate amendments to **H.B. 2110** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Rudd, Chair; Williamson, McDonald, Watkins, Madla.

The House has refused to concur in Senate amendments to **H.B. 1744** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: R. Lewis, Chair; Yost, Linebarger, Willy, Hilderbran.

The House has refused to concur in Senate amendments to **H.B. 1704** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Rodriguez, Chair; Craddick, Hirschi, Park, Harris.

The House has refused to concur in Senate amendments to **H.B. 546** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Moreno, Chair; McDonald, Schoolcraft, Brimer, Saunders.

The House has refused to concur in Senate amendments to **H.B. 302** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Park, Chair; Ogden, Heflin, Shea, Cook.

The House has refused to concur in Senate amendments to **H.B. 7** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Robnett, Chair; S. Thompson, Soileau, Kuempel, Williamson.

The House has refused to concur in Senate amendments to **H.B. 907** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Grusendorf, Chair; Kuempel, S. Thompson, Edwards, Robnett.

The House has refused to concur in Senate amendments to **H.B. 749** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Cain, Chair; A. Hill, Goolsby, Gibson, Berlanga.

The House has refused to concur in Senate amendments to **H.B. 549** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: M. Gallegos, Chair; Ogden, Tallas, De La Garza, P. Gallego.

The House has refused to concur in Senate amendments to **H.B. 2265** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Berlanga, Chair; Horn, Fraser, Wolens, Junell.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 42**: Colbert, Chair; Grusendorf, Luna, Blair, Glossbrenner.

The House has adopted the Conference Committee Report on **S.B. 323** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 451** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 784** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 962** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1563** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2411**

Senator Lyon submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2411** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LYON
GREEN
JOHNSON
BROOKS
MONCRIEF

On the part of the Senate

BLACKWOOD
LARRY
OVARO
MARCHANT

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 355**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 355** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI
ELLIS
GREEN
TEJEDA
WHITMIRE

On the part of the Senate

DENTON
COOK
GOODMAN
PLACE
SMITHEE

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the disposition of fees imposed for execution or processing of a warrant or capias.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Article 102.011, Code of Criminal Procedure, is amended to read as follows:

(a) A defendant convicted of a misdemeanor shall pay the following fees for services performed in the case by a peace officer:

(1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;

(2) \$35 for executing or processing an issued arrest warrant or capias, with the fee imposed for the services of:

(A) the law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or

(B) the law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within the period required by Paragraph (A) of this subdivision;

(3) \$5 for summoning a witness;

(4) \$35 for serving a writ not otherwise listed in this article;

(5) \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;

(6) \$5 for commitment or release;

(7) \$5 for summoning a jury, if a jury is summoned; and

(8) \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

SECTION 2. The change in law made by this Act applies only to the disposition of a fee imposed for a service performed on or after the effective date of this Act. The disposition of a fee imposed before the effective date of this Act is covered by the law in effect on the date the fee was imposed, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2555**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2555** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROWN
GREEN
HARRIS OF DALLAS
HENDERSON
ARMBRISTER
On the part of the Senate

WILLY
McCOLLOUGH
UHER
SCHECHTER
HARTNETT
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 1770**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1770** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
ARMBRISTER
BROWN
SIMS
On the part of the Senate

OAKLEY
SEIDLITS
HIGHTOWER
KUEMPEL
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 765 ON THIRD READING**

Senator Parker moved that the regular order of business be suspended and that C.S.H.B. 765 be placed on its third reading and final passage.

C.S.H.B. 765, Relating to the grand jury proceedings.

The motion was lost by the following vote: Yeas 17, Nays 14. (Not receiving two-thirds vote of Members present)

Yeas: Brooks, Carriker, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Lucio, Moncrief, Parker, Ratliff, Rosson, Sibley, Zaffirini.

Nays: Armbrister, Barrientos, Bivins, Brown, Dickson, Krier, Leedom, Lyon, Montford, Sims, Tejeda, Truan, Turner, Whitmire.

**COMMITTEE SUBSTITUTE
HOUSE BILL 333 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 333, Relating to the deposit and use of certain funds received by the Texas State Board of Pharmacy.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 333 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 333 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 112 WITH HOUSE AMENDMENT

Senator Moncrief called S.B. 112 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Madla

Amend S.B. 112 by substituting the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to community centers and to the provision of community mental health and mental retardation services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.02, Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), is amended by amending Subdivision (4) and by adding Subdivisions (17) and (18) to read as follows:

(4) "Local agency" means a city, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, state-supported medical school, or any organizational combination of

two or more of those entities [cities, two or more counties, two or more hospital districts, two or more school districts, or two or more cities, counties, hospital districts and school districts].

(17) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(18) "Chemical dependency" has the meaning assigned by Section 461.002, Health and Safety Code.

SECTION 2. Section 2.41, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The department by contract or other method of allocation may disburse to a local mental health and mental retardation authority department [all] federal mental health [block grant] funds and department state funds to be spent in the local service area for community mental health and[,] mental retardation services, and for chemical dependency [substance abuse] services for persons who are dually diagnosed as having both chemical dependency and mental illness or mental retardation [to be spent in the local service area].

(c) A local mental health and mental retardation authority, with the department's approval, shall use [by subcontract or other method of allocation disburse] the funds received under Subsection (b) of this section to provide mental health, mental retardation, and chemical dependency [substance abuse] services in the local service area or to subcontract for those services.

(d) A local mental health and mental retardation authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

SECTION 3. Sections 3.01(a) and (d), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Local agencies which may establish and operate community centers are a county, a city, a hospital district, a school district, or any organizational combination of two (2) or more of these. When community centers are established by an organizational combination, the governing bodies of such organizational combination shall enter into a contract between or among them which shall stipulate whether the board of trustees shall consist of not less than five (5) nor more than nine (9) members selected from the governing bodies of the organizational combination, or of not less than five (5) nor more than nine (9) members to be appointed from the qualified voters of the region to be served. This contract may be renegotiated or amended from time to time as necessary to change the method of establishing a board of trustees or to change the membership of the board to more accurately reflect the ethnic and geographic diversity of the local service area.

(d) A community center may be established only if:

(1) the proposed center submits to the department a copy of the contract between the participating local agencies, if applicable;

(2) the department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or mental retardation program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

(3) the department [deliver mental health or mental retardation services and] determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) A community center established under Subsection (d) of this section [this subsection] may operate only for the purposes defined in the center's plan. The

board by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting and approving a center's plan.

SECTION 4. Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended by amending Sections 3.01A-3.10 and by adding Sections 3.02A, 3.02B, and 3.08A to read as follows:

Sec. 3.01A. PURPOSE AND POLICY. Community centers created pursuant to this Act are intended to be vital components in a continuum of services for the mentally ill and mentally retarded individuals of this state. It is the policy of this state that community centers strive to develop services for the mentally ill and mentally retarded, and may provide requested services to persons with a chemical dependency, that are effective alternatives to treatment in large residential facilities.

Sec. 3.02. BOARDS OF TRUSTEES. (a) The board of trustees of community centers established by a single local agency [~~city, county, hospital district or school district~~] may be the members of the governing body of the local agency [~~single city, county, hospital district or school district~~], or that governing body may appoint from among the qualified voters of the region to be served a board of trustees consisting of not less than five (5) nor more than nine (9) persons. If the board of trustees is appointed from the qualified voters of the region to be served, the terms of the members thereof shall be staggered by appointing not less than one-third (1/3) nor more than one-half (1/2) of the members for one (1) year, or until their successors are appointed, and by appointing the remaining members for two (2) years, or until their successors are appointed. Thereafter, all appointments shall be for a two (2) year period, or until their successors are appointed. Appointments made to fill unexpired terms shall be for the period of the unexpired term, or until a successor is appointed. If the local agency or organizational combination of local agencies that appoints the board of trustees is primarily located in only one county, a person appointed to the board of trustees may not serve more than four consecutive and complete two-year terms.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board one or more persons otherwise qualified under this Act who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

(c) Boards of trustees of community centers established by an organizational combination shall consist of not less than five (5) nor more than nine (9) members selected from the membership of the governing bodies of the organizational combination, or such governing bodies may jointly appoint a board of trustees from among the qualified voters of the region to be served in the manner authorized in Section 3.02(A) above.

(d) [(c)] The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;
(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees; and

(5) a procedure to ensure that an appointed member of a board of trustees appointed by a local agency or organizational combination of local agencies

primarily located in only one county serves not more than four consecutive and complete two-year terms.

Sec. 3.02A. TRAINING. (a) The board by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or mental retardation and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;

(2) the programs the community center operates;

(3) the community center's budget for that program year;

(4) the results of the most recent formal audit of the community center;

(5) the requirements of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes);

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any ethics policies adopted by the community center.

Sec. 3.02B. QUALIFICATIONS, CONFLICT OF INTEREST; REMOVAL. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B) as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation,

vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this article.

(g) In addition to any grounds for removal adopted under Section 3.02(d) of this Act, it is a ground for removal of a member of a board of trustees if the member:

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c) of this section;

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c) of this section;

(4) violates a provision of Subsection (e) of this section;

(5) violates a provision of Section 3.08A of this article; or

(6) does not execute the affidavit required by Subsection (f) of this section.

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Sec. 3.03. BUDGET; REQUEST FOR FUNDS. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:

(1) approved fiscal year operating budget;

(2) most recent annual financial audit; and

(3) staff salaries by position.

(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center [This Act shall not affect the validity of community centers and boards of trustees of such centers established and appointed before it becomes effective; provided, however, this provision shall not be construed to preclude reconstitution of community centers and the board of trustees of such centers as authorized by this Act. This Act shall not affect the validity of board selection committees appointed by an organizational combination of more than six (6) local agencies under authority of Section 3.02(a), Acts 59th Legislature, Regular Session, 1965, as amended. All other board selection committees are abolished and appointments to fill vacancies on boards of trustees of these centers shall be made by the governing bodies which participated in the establishment of the centers].

Sec. 3.04. MEETINGS. (a) The boards of trustees shall make rules to govern the holding of regular and special meetings. All meetings of the boards of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business.

(b) The board shall keep a record of its proceedings in accordance with the general law of this state that requires meetings of governmental bodies to be open to the public, and the record is open to inspection by the public in accordance with that law. The board of trustees shall send to the department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States postal service; or

(2) another method agreed to by the board of trustees and the local agency.

Sec. 3.05. ADMINISTRATION. (a) The board of trustees is responsible for effective [the] administration of community centers.

(b) The board of trustees shall develop policies consistent with the rules, regulations, and standards of the Department.

(c) The board of trustees shall require that an appraiser certified by a master appraisal institute conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease property for an amount that is greater than the property's appraised value unless:

(1) the purchase or lease of that property at that price is necessary;

(2) the board of trustees documents in the official minutes the reasons why the purchase or lease is necessary at that price; and

(3) a majority of the board approves the transaction.

(d) The board of trustees shall establish in accordance with relevant department rules competitive bidding procedures and practices for capital purchases and for purchases involving Department funds or required local matching funds [standardize qualifications for personnel positions for the community center consistent with those developed by the Commissioner in Subsection (f) of Section 2-12 of this Act].

Sec. 3.06. ADVISORY COMMITTEES. Boards of trustees may appoint advisory committees, medical committees and other committees to advise the board on matters relating to [the administration of] mental health and mental retardation services. No such committee shall consist of less than three (3) [five-(5)] members; and the appointment of such committees shall not relieve the board of trustees of final responsibility and accountability as provided in this Act.

Sec. 3.07. EXECUTIVE DIRECTOR. (a) The board of trustees shall appoint an executive director for each community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits [executive director may have powers delegated by and subject to the policy direction of the board of trustees].

Sec. 3.08. PERSONNEL. (a) The executive [board or] director shall, in accordance with the policies of the board of trustees, [may] employ and train personnel for the administration of the various programs and services of a community center. The board shall provide appropriate rights, privileges and benefits to the employees of a community center [consistent with those rights, privileges and benefits available to employees of the governing bodies which establish the center and is authorized to provide] and may provide workmen's compensation benefits.

(b) The number of employees and their salaries shall be as prescribed by the board of trustees~~], as approved by the Commissioner]~~. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the Commissioner.

(c) Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act to determine the appropriate classification and relative compensation of officers and employees. The board may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the Commissioner. The board of trustees may petition the Department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.

(d) During a management audit of a community center, the Department is entitled to confirm the method the center used to determine salaries and benefits.

Sec. 3.08A. NEPOTISM. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b) of this section, the related member of the board of trustees may not participate in the deliberation or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

Sec. 3.09. CONTRIBUTION OF LOCAL AGENCIES. Each participating local agency may contribute lands, buildings, facilities, other real and personal property, personnel and funds for the administration of the various programs and services of a community center.

Sec. 3.10. GIFTS, GRANTS, DONATIONS. A community center may accept gifts, grants, and donations of money, personal property, and real property for use in the provision [administration] of its programs and services.

SECTION 5. Sections 3.11(c), (f), and (h), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) A special fund to be known as the special community centers facilities construction and renovation fund is established in the state treasury. The fund may be used only to finance the construction of facilities by the Department or the renovation of buildings and facilities by community centers under this section. The Texas Board of Mental Health and Mental Retardation shall establish priorities for the use of facilities constructed or renovated under this section in terms of appropriate types of community-based services and alternative living arrangements for the mentally disabled. These priorities shall serve as a basis for criteria to be used by the Department in determining the eligibility of a proposal for facility construction or renovation. If the Department agrees to construct a facility for a

community center, the agreement must include provision for a lease-purchase arrangement between the community center~~[, the governing body of each local agency establishing the community center,]~~ and the Department. If the Department agrees to provide funding to renovate a building or facility owned or leased by a community center, the renovation funding agreement must include provision for obtaining a lien against the community center's buildings or facilities in an amount equal to the funding provided. The renovation funding agreement must also include a provision authorizing the Department to withhold state contract funds if the community center fails to make repayments on time. The Department shall specify a leasing or repayment arrangement which includes an amortization of the cost of the facility or renovation ~~[over a period not to exceed forty (40) years]~~. The agreement shall ~~[may]~~ provide for reasonable interest to be paid by the center on the total cost of the facility or renovation. The rate of interest may not exceed fifty (50) percent of the market interest rate, as determined by the Department, applicable at the time of the signing of the lease-purchase or renovation funding agreement to any establishing agency's revenue bonds if the agency were to issue bonds for the construction of the community center or for the renovation of the building or facility for the same term as the term covered by the lease-purchase or renovation funding agreement. The leasing payments shall be credited to the special community centers facilities construction and renovation fund toward the purchase of the facility by the community center. The repayments by a community center of funding provided to renovate a building or facility shall be credited to the special community centers facilities construction and renovation fund toward repayment of the funding and release of the lien.

(f) The community center may utilize state funds, including but not limited to state contract funds, for the operation of a ~~[the] facility constructed or leased under this section~~, provided that the total amount of all state funds used in the actual operation of the facility may not exceed sixty (60) percent of the total operating budget of that facility. ~~[State funds received by the community center may not be used to pay leasing payment obligations or repayments of renovation funding under this section.]~~ Leasing payments and repayments of renovation funding do not qualify as operating expenses for determining the total operating budget of the facility. Construction, renovation, and operation of a facility under the provisions of this section are not grounds for receipt by a community center of additional contract funds in excess of the amount of contract funds the center would otherwise receive pursuant to the rules and regulations of the Department governing the distribution of such funds.

(h) In acquiring real property and personal property pursuant to Subsection (a) of this section and constructing improvements in connection therewith, a community center is authorized to issue bonds or notes in accordance with the provisions of Chapter 845, Acts of the 67th Legislature, Regular Session, 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), and may enter into contracts, as defined in, in accordance with, and with the effect provided by Sections 271.003-271.009, Local Government Code (Public Property Finance Act). The limitations contained in that Act regarding real property and the construction of improvements thereon shall not be applicable to community centers. Any bonds ~~[or notes]~~ issued by the community center must receive the approval of the Attorney General of the State of Texas prior to their issuance.

SECTION 6. Section 3.12A, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (b) of this section, it is the intent of the legislature that the Department limit its control over and routine reviews of community center programs to those programs that:

(1) use Department [state] funds or use required local funds that are matched with Department [state] funds;
 (2) provide core or required services;
 (3) provide services to former clients or patients of a departmental facility; or

(4) are affected by litigation in which the Department is a defendant.

(c) The Department may determine if a program is subject to the Department's review if there is a question as to whether a particular program uses Department [state] funds or uses required local matching funds.

(d) This Act does not prevent a community center from providing services to a person with chemical dependency or to a person who is a "mentally disabled person," as that term is defined by Section 5.01 of this Act, as added by Chapter 835, Acts of the 70th Legislature, Regular Session, 1987. A community center may provide those services by contracting with a public or private agency in addition to the Department. A community center may not provide services to a person with a disability that is not listed in the definition of "mentally disabled person" provided by Section 5.01 of this Act. However, a community center that, on or before September 1, 1991, has contracted to provide services to a person with a disability that is not listed in that definition may continue to receive funding and provide services to that person for the term of the contract.

SECTION 7. Section 3.14(a), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A community center shall charge reasonable fees ~~[to cover costs]~~ for services provided, except where prohibited by other service contracts or law. In collecting fees for the treatment of clients, a community center has the same rights, privileges, and powers granted by law to the Texas Department of Mental Health and Mental Retardation. The county or district attorney of counties where community centers are located shall, when requested by the executive director of a community center, represent the community center in the collection of fees for services provided.

SECTION 8. Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), is amended by adding Section 3.16 to read as follows:

Sec. 3.16. PROGRAM REVIEW AND MANAGEMENT AUDIT. (a) The Department by rule shall establish program review and management audit procedures as a contract requirement for community centers to ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that adequate and appropriate fiscal controls exist in community centers.

(b) The Department shall conduct periodic program reviews at each community center. The Commissioner or the Commissioner's designee shall prepare, publish, and distribute a formal procedure for the periodic program reviews.

(c) The Department shall conduct periodic management audits at each community center. The director of the internal audit unit, with the approval of the board's audit committee, shall prepare and publish a formal risk assessment procedure for the audits. The Department shall include in a management audit a comprehensive review of the center's annual financial and compliance audit activities required under Section 4.04 of this Act.

(d) After a program review or management audit is conducted, the Department shall send to the community center a written report that identifies in clear language each significant deficiency identified and each question raised by the review or audit.

(e) The board of trustees shall provide to the Department a written response to the concerns raised by the review or audit within the period prescribed by Department rule. The response must:

(1) describe any action taken or to be taken to correct an identified deficiency;

(2) provide narrative responses to questions relating to policies or procedures raised in the review or audit; and

(3) give notice of any disagreement the board of trustees has with a specific finding of the review or audit.

(f) Within the period prescribed by Department rules, the Commissioner or the Board's audit committee shall review the community center's responses and shall notify in writing the community center of any inadequacy or deficiency found in the response. The community center may provide additional responses to the Commissioner. The Commissioner shall establish a reasonable deadline for receiving responses.

(g) If, by the date prescribed by the Commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of the Commissioner, the Department may discontinue the transfer of related Department funds to the community center until the dispute is resolved. The community center is entitled to notice and an opportunity for a hearing before the transfer of Department funds is discontinued. The Board by rule shall prescribe the hearings procedure.

(h) The Department may withhold funds during the pendency of an appeal to a court if the Department hearing upholds the discontinuation of the funds. The Department shall transfer the withheld funds to the community center if the final determination is favorable to the community center.

(i) The Department shall incorporate the community center's responses into the official management audit report in accordance with the Government Auditing Standards published by the United States General Accounting Office. The Department shall publish the final report within the period prescribed by Department rules, but not later than the 60th day after the date on which the audit staff conducts the official exit conference with the community center. If the Department disagrees with the community center's responses as provided by Subsection (f) of this section, the Department shall publish the official report within the period prescribed by Department rules.

SECTION 9. Sections 4.01(a) and (d), Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Department shall prescribe such rules, regulations and standards, not inconsistent with the Constitution and laws of this State, as it considers necessary and appropriate to insure adequate provision of community-based mental health and mental retardation services through a local mental health or mental retardation authority ~~[by departmental facility outreach programs or by community centers and other providers receiving contract funds as designated providers]~~ pursuant to Section 4.03 of this Act. Each ~~[designated provider]~~ contract between a local mental health or mental retardation authority and the Department shall contain a provision authorizing the Department to have unrestricted access to all facilities, records, data, and other information under the control of the local mental health or mental retardation authority, the ~~[designated provider or]~~ subcontractor of the local mental health or mental retardation authority, or the designated provider as necessary to enable the Department to audit, monitor, and review all financial and programmatic activities and services associated with Department funds ~~[the contract]~~.

(d) A copy of these rules shall be sent to each local mental health or mental retardation authority ~~[departmental facility outreach program and each community center]~~ or other provider receiving contract funds as a local mental health or mental retardation authority or designated provider pursuant to Section 4.03 of this Act.

SECTION 10. Section 4.03, Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.03. PROVISION OF COMMUNITY-BASED SERVICES. (a) The Department shall insure that at a minimum the following services are available in each service area:

- (1) 24-hour emergency screening and rapid crisis stabilization services;
- (2) community-based crisis residential service or hospitalization;
- (3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
- (4) family support services, including respite care, as provided by Section 4.03A of this Act;
- (5) case management services;
- (6) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
- (7) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

In addition, the Department shall arrange for appropriate community-based services to be available in each service area, including the assignment of a case manager, for all persons discharged from departmental facilities or institutions in need of aftercare services or continuum of care.

To the extent that resources are available, the Department shall ensure that the services listed in this subsection are available for children and adolescents, as well as adults, in each service area.

To the extent that resources are available, the Department shall emphasize early intervention services for children and adolescents who meet the Department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses.

(b) The Board shall adopt, and the Department shall enforce, rules that require continuity of services and planning for patient or client care between Department facilities and local mental health or mental retardation authorities. At a minimum, the rules shall require joint discharge planning between a Department facility and a local mental health or mental retardation authority before a facility discharges a patient or client or places the patient or client on an extended furlough with an intent to discharge. The local mental health or mental retardation authority shall plan with the Department facility and determine the appropriate community services for the patient or client. The local mental health or mental retardation authority shall arrange for the provision of the services if Department funds are to be used and may subcontract with or make a referral to a local agency or entity.

(c) The Department shall identify and contract with a local mental health or mental retardation authority [one or more designated providers] for each service area to provide services to patient and client populations determined by the Department. Each local mental health or mental retardation authority [designated provider] shall provide, either directly or by subcontract, specific performance outcomes or services to address the needs of priority client populations as required by the Department and shall comply with the rules, regulations and standards established by the Department pursuant to Section 4.01 of this Act. Each local mental health or mental retardation authority [designated provider] shall coordinate its activities with those of other appropriate agencies providing care and treatment for individuals with drug or alcohol problems. In identifying a local mental health or mental retardation authority [designated provider], the Department shall give preference to a community center located in a given service area established pursuant to Section 3.01 of this Act. If the Department is unable to negotiate a contract with a local mental health or mental retardation authority [center] to insure that a specific required service [services] for priority client

populations is [are] available in that service area, or if the Department determines that a local mental health or mental retardation authority [center] does not have the capacity to insure the availability of that service [such services], the Department may contract with other local agencies or private providers or organizations to act as a designated provider for that service [area]. If the Department is unable to identify and contract with a community center [designated provider] in a service area, the Department shall provide the services required under this article directly through a departmental facility outreach program or contract with another agency, provider, or organization as the local mental health or mental retardation authority.

(d) [(c)] The Department shall develop standards of care and mechanisms for monitoring the services provided by local mental health or mental retardation authorities [departmental facility outreach programs or by designated providers] and their subcontractors. These standards shall be designed [designated] to insure that the quality of community-based services be consistent with the quality of care available in other departmental facilities and institutions. The Department shall biennially review these standards in conjunction with local mental health or mental retardation authorities [designated providers] to determine if each standard is necessary to ensure the quality of care. The Department shall specify performance standards including outcome measures for evaluating the compliance of a local mental health or mental retardation authority [departmental facility outreach program or designated provider] with the provisions of its obligation or contract to provide specific services to priority client populations. The Department shall review the program quality and program performance results of each local mental health or mental retardation authority [departmental facility outreach program and each designated provider] at least once each fiscal year. The Department may determine the scope of each review on a case-by-case basis. In addition, to supplement departmental reviews, the Department shall assist local mental health or mental retardation authorities [designated providers] in developing a peer review organization to provide self-assessments of programs. The Commissioner may [shall] refuse to renew a contract with a local mental health or mental retardation authority [designated provider] and select other agencies, providers, or organizations to be the local mental health or mental retardation authority [designated provider] if an evaluation of the original authority's [provider's] performance by the Department indicates an inability to insure the availability of the specific services to priority client populations required by the Department and the provisions of this Act.

(e) [(d)] The Department shall [may] include in the terms of its contract with a local mental health or mental retardation authority [designated provider] a requirement that some or all of the state funds be matched by local support. Local support shall be in such proportions and amounts as may be jointly agreed to [determined] by the Department and the board of the authority based on the authority's financial capability and its overall commitment to other mental health or mental retardation programs, as appropriate. [If such match is specified, it shall be uniformly required of all providers or contractors in the service area.] The Department shall also establish a local match requirement for departmental facility outreach programs that provide community-based services required under this article. The requirement must be consistent with the requirements applied to other local mental health or mental retardation authorities [designated providers]. For the purpose of calculating the local support for a local mental health or mental retardation authority, contributions such as local tax funds [share of the operating costs of a community center, departmental facility outreach program, or other designated provider], patient fee income, third-party insurance income, services, and facilities contributed by the local mental health or mental retardation authority [designated provider] and contributions by a county or city or other locally

generated contributions may be counted ~~[as local support]~~. The Department may disallow or reduce the value of services claimed as support.

~~(f) [(e)]~~ The Department shall establish a uniform fee collection policy which is the same for all local mental health or mental retardation authorities and [community centers and other designated providers] which is equitable, provides for collections, and maximizes contributions to local revenue.

~~(g)~~ The Board by rule, in cooperation with local mental health and mental retardation authorities, consumers, consumer advocates, and service providers shall establish a uniform procedure that each local mental health or mental retardation authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal such decisions.

SECTION 11. Section 4.03B(b), Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall design one or more contracts to serve as the model for the contract that must be used by a mental health or mental retardation authority to contract with a private provider for services under this section. The model contracts must:

(1) require that the services provided by the private provider be based on the client's individual treatment plan; and

(2) outline a dispute resolution procedure.

SECTION 12. Section 4.04, Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.04. AUDITING PROCEDURES. A local mental health or mental retardation authority, except a state facility designated as an authority ~~[The board of trustees of a community center or the administrative authority of a designated provider other than a community center]~~, as a condition precedent to its receiving ~~[contract]~~ funds under this Act, shall annually submit to the Department a financial and compliance audit prepared ~~[have its accounts audited]~~ by a Texas certified or public accountant licensed by the Texas State Board of Public Accountancy. To insure the highest degree of independence and quality, the local mental health or mental retardation authority shall use an invitation-for-proposal process as prescribed by the Department to select the auditor. Such audit shall meet at least the minimum requirements as shall be, and in such form and in the number of copies as may be, prescribed by the Department and approved by the State Auditor. The required number of copies [A copy] of each such annual audit, approved by the local mental health or mental retardation authority [board of trustees of the community center or the administrative authority of the designated provider], shall be filed by the local mental health or mental retardation authority [community center or designated provider] with the Department on such date as the Department may specify. Where the local mental health or mental retardation authority [board of trustees or administrative authority] declines or refuses to approve the audit report, it shall nevertheless file with the said Department copies [a copy] of the audit report with its statement detailing its reasons for failure to approve the report. From the copies [In addition to the copy] furnished by the Department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee. The Department shall annually submit to the Governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the Department's reviews of fiscal audit activities. The Commissioner and the State Auditor, on behalf of the Department and the Legislative Audit Committee, respectively, shall have access to all vouchers, receipts, journals and other records as either may deem needed and appropriate for the review and analysis of audit reports.

SECTION 13. Sections 4.01A and 4.02, Texas Mental Health and Mental Retardation Act (Article 5547-204, Vernon's Texas Civil Statutes), are repealed.

SECTION 14. (a) This Act takes effect September 1, 1991.

(b) A term served by a member of a board of trustees that began on or before August 31, 1991, is not included for the purposes of determining if a member has served the maximum number of terms prescribed by Section 3.02(a), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as amended by this Act.

(c) The membership requirements prescribed by Section 3.02(b), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as amended by this Act, apply only to an appointment made on or after September 1, 1991.

(d) A board member serving on a board of trustees on August 31, 1991, is not required to have, during that term only, the qualifications prescribed by Section 3.02B, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as added by this Act, and is not subject to removal for the failure to have the qualifications.

(e) A board selection committee appointed by an organizational combination of local agencies under Section 3.02(a), Chapter 67, Acts of the 59th Legislature, Regular Session, 1965, as it read preceding September 1, 1969, is abolished on September 1, 1993, and any board of trustees appointed under that prior law shall reorganize not later than that date to comply with Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as amended by this Act.

(f) The employment restrictions prescribed by Section 3.08A, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as added by this Act, apply only to an officer or employee hired on or after September 1, 1991. Subsection (d) of that section applies regardless of when the officer or employee is hired.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendment to S.B. 112 by a viva voce vote.

SENATE BILL 1490 WITH HOUSE AMENDMENT

Senator Moncrief called S.B. 1490 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Brimer

Amend S.B. 1490 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to amending Article 5.43-2, Texas Insurance Code to provide for the authority of the State Board of Insurance to adopt regulations concerning licensees and regulated equipment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 2. As used in this article:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of seven [five] individuals to be appointed by the State Board of Insurance and experienced and knowledgeable in [one or more of] the following areas: three persons employed by any registered firm in the fire protection industry and that have a minimum of three years experience in the sale, installation, maintenance, or manufacturing of fire alarm or fire detection devices; two persons experienced in the engineering of fire prevention services or a member of a fire protection association; one person experienced and employed by a municipality or county as a fire prevention officer; and one person experienced and employed by any registered firm and who has at least three years experience in the operation of a central fire alarm monitoring station [sale; installation, maintenance, or manufacturing of fire alarm or detection systems; electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance].

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

~~[(7) "Approval, approved" means that equipment which has been tested or listed by a testing laboratory approved by the State Board of Insurance.]~~

(7) ~~[(8)]~~ "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(8) ~~[(9)]~~ "Monitoring" means the receipt of fire alarm and supervisory signals and retransmission or communication of those signals to a fire service communications center that is located in this state or serves property in this state.

(9) ~~[(10)]~~ "Service, servicing" means inspecting, maintaining, repairing, or testing.

(10) ~~[(11)]~~ "Fire detection device" means any arrangement of materials, the sole function of which is to provide indication of fire, smoke, or combustion in its incipient stages.

(11) ~~[(12)]~~ "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) ~~[(13)]~~ "Fire alarm technician" means a licensed individual who shall be designated by a registered firm to:

(A) inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law; or

(B) perform or directly supervise the servicing or maintaining of a previously installed fire alarm device or system and to certify such service or maintenance. A fire alarm technician may perform or supervise monitoring.

~~[(13) [(14)]~~ "Fire alarm planning superintendent" means a licensed individual who shall be designated by a registered firm to plan any [a] fire alarm or detection system conforming to applicable adopted National Fire Protection Association standards or other adopted standards and to certify that each fire alarm or detection system as planned meets the standards as provided by law. A fire alarm planning superintendent can function as a fire alarm technician or a Residential Fire Alarm Superintendent.

(14) "Residential Fire Alarm Superintendent" means a licensed individual who shall be designated by a registered firm to plan a residential single family or two family fire alarm or detection system conforming to applicable adopted National Fire Protection Association standards or other adopted standards and to certify that each fire alarm or detection system as planned meets the standards as provided by law. A Residential Fire Alarm Superintendent can function as a fire alarm technician.

(15) [(14)] "Insurance agent" means:

(A) a person, firm, or corporation licensed under Article 21.14 or 1.14-2 of this code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(16) [(15)] "Registered firm" means a person or organization holding a certificate of registration.

SECTION 2. Section 3, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 3. (a) The provisions of this article and the rules and regulations promulgated under this article shall have uniform force and effect throughout the state and no municipality or county shall ~~hereinafter~~ enact any ordinances, rules or regulations inconsistent with the provisions of this article or rules and regulations promulgated pursuant to this article and any such ordinances, rules or regulations are void and shall have no effect; provided however, that a municipality or county shall have the right to: (1) mandate that a fire alarm or detection system be installed in certain facilities, so long as said installation conforms to applicable state law and (2) require a better type of alarm or detection system or otherwise safer conditions than the minimum required by state law. [Provided, however, that any municipality or county ordinances, rules or regulations in force or effect on the effective date of this article shall not be invalidated because of any provision of this article.]

(b) The licensing provisions of this article shall not apply to:

(1) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a fire alarm or detection system if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of and certified by a licensed employee or agent of a firm registered to install and certify such an alarm or detection device and that the registered firm assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not plan, certify, lease, sell, service, or maintain fire alarms or detection devices or systems;

(2) a person or organization that owns and installs fire detection or fire alarm devices on the person's or organization's own property or, if the person or organization does or not charge for the device or its installation, installs it for the protection of the person's or organization's personal property located on another's property and does not install the devices as a normal business practice on the property of another;

(3) a person who holds a license or other form of permission issued by an incorporated city or town to practice as an electrician and who installs fire or smoke detection and alarm devices in no building other than a single family or multifamily residence if:

(A) the devices installed are single station detectors; and

(B) all installations comply with provisions of the adopted edition of Household Fire Warning Equipment, National Fire Protection Association Standard No. 74;

(4) a person or organization that sells fire detection or fire alarm devices if the sales are exclusively over-the-counter or by mail order and if the person or organization does not plan, certify, install, service, or maintain this equipment;

(5) response to a fire alarm or detection device by a law enforcement agency or fire department or by a law enforcement officer or fireman acting in an official capacity;

(6) a Texas registered professional engineer acting solely in his professional capacity;

(7) a person or an organization that provides and installs at no charge to the property owners or residents a battery-powered smoke detector in a single-family or two-family residence if:

(A) the smoke detector bears a label of listing or approval by a testing laboratory approved by the State Board of Insurance;

(B) the installation complies with provisions of the adopted edition of National Fire Protection Association Standard No. 74;

(C) the installers are knowledgeable in fire protection and the proper use of smoke detectors; and

(D) the detector is a single station installation and not a part of or connected to any other detection device or system;

(8) a regular employee of a registered firm who is under the direct supervision of a licensee; or

(9) a building owner, the owner's managing agent, or their employees who install battery-operated single-station smoke detectors or who monitor fire alarm or fire detection devices or systems in the owner's building, and in which the monitoring is performed at the owner's property, and monitored at no charge to the occupants of the building, and complies with applicable standards of the National Fire Protection Association as may be adopted by rule promulgated under this act, and utilizes equipment approved by a testing laboratory approved by the State Board of Insurance for fire alarm monitoring.

(10) a person employed by a registered firm that sells and installs a smoke or heat detector in a single-family or two-family residence if:

(A) the detector bears a label of listing or approval by a testing laboratory approved by the State Board of Insurance;

(B) the installation complies with provisions of the adopted edition of National Fire Protection Association Standard No. 74;

(C) the installers are knowledgeable in fire protection and the proper use and placement of detectors; and

(D) the detector is a single station installation and not a part of or connected to any other detection device or system.

(c) Registered companies, licensees, and employees of licensees shall not be required to obtain any registration, franchise, or license from or pay any fee or franchise tax to or post any bond by any municipality, county, or other political subdivision of this state to engage in business or perform any activities authorized under this act. Notwithstanding any other provisions of this section, a municipality or county may require a registered firm to obtain a permit and pay a fee therefore for the installation of a fire alarm or fire detection device or system and require that the installation of such system be in conformance with the building code or other construction requirements of the municipality or county and state law, but may not impose qualification or financial responsibility requirements other than proof of a valid certificate of registration.

SECTION 3. Section 5, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 5. (a) Each person or organization engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire

alarm or fire detection devices or systems shall have a certificate of registration issued by the board. The initial fee for the certificate of registration must be in an amount not to exceed \$500 and the renewal fee for each year thereafter must be in an amount not to exceed \$500. A registered person or firm shall retain at least one fire alarm technician, residential fire alarm superintendent or fire alarm planning superintendent as an employee. A limited certificate of registration may be issued to persons or organizations whose business is restricted to monitoring.

(b) Each separate office location of a registered firm, other than the location identified on the certificate of registration, shall have a branch office registration certificate issued by the board. The initial fee for this branch office registration certificate must be in an amount not to exceed \$150 and the renewal fee for each year thereafter must be in an amount not to exceed \$150. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm technician, residential fire alarm superintendent or fire alarm planning superintendent must obtain a license issued by the board. The initial fee for the license must be in an amount not to exceed \$100 and the renewal fee for each year thereafter must be in an amount not to exceed \$100. A nonrefundable fee for the initial examination must not exceed \$30. A nonrefundable fee not to exceed \$20 shall be charged for each reexamination.

(d) A fee in an amount not to exceed \$20 shall be charged for a duplicate certificate of registration or license issued by the board and for any requested change to a certificate of registration or license.

(e) Repealed by Acts 1989, 71st Leg., ch 762, Sec. 21, eff. June 15, 1989.

(f) A person licensed pursuant to this article shall be an employee or agent of an organization that holds a valid certificate of registration.

(g) Repealed by Acts 1989, 71st Leg., ch 762, Sec. 21, eff. June 15, 1989.

(h) A certificate of registration or license issued under this article is not transferable.

(i) The board shall, within the limits fixed by this section, prescribe the fees to be charged under this section.

SECTION 4. Section 5C, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 5C (a) An unexpired license or registration may be renewed by paying the required renewal fee to the board before the expiration of the license or registration. If a license or registration has been expired for not longer than 90 days, the license or registration may be renewed by paying to the board the required renewal fee and a fee that is not to exceed one-fourth ~~[one-half]~~ of the original fee for the license or registration. If a license or registration has been expired for longer than 90 days but less than two years, the license or registration may be renewed by paying to the board all unpaid renewal fees and a fee that is not to exceed ~~[equal to]~~ the original fee for the license or registration. If a license or registration has been expired for two years or longer, the license or registration may not be renewed. A new license or registration may be obtained by complying with the requirements and procedures for obtaining an original license or registration. At least 30 days before the expiration of a license or registration, the State Fire Marshal shall send written notice of the impending license or registration expiration to the licensee or registrant at his or its last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(b) The State Board of Insurance by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that

each licensee or registrant shall pay only that portion of the fee that is allocable to the number of months during which the license or registration is valid. On each subsequent renewal, the total renewal fee is payable.

(c) A license or registration issued under this Act shall expire at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete, but there has been no lapse in the required insurance, the applicant shall have 30 days from the time that the applicant is notified by the Board of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30 day period, a late fee may be charged.

SECTION 5. Section 6, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 6. (a) The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates and licenses, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of persons and organizations engaging in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems; and

(2) the requirements for the planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems;

(B) conducting examinations and evaluating the qualifications of applicants for fire alarm technician, residential fire alarm superintendent or fire alarm planning superintendent licenses;

(C) evaluating and determining which organizations shall be approved as testing laboratories for the purpose of this article; and evaluating and approving required training programs for all persons who engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems.

SECTION 6. Section 9, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 9. (a) Except as provided in subsection (b) of this section, no [No] detection or alarm device, alarm system, or monitoring equipment, a purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, installed, or used to monitor property in this state unless it carries a label of approval or listing of a testing laboratory approved by the State Board of Insurance; provided, however, that the continued use or monitoring of equipment in place which complied with applicable law at the time of its original placement, without extension, modification or alteration is not prohibited.

(b) No detection or alarm device, alarm system, or monitoring equipment in one or two family residences, a purpose of which is to detect and/or give alarm of fire may be sold, offered for sale, leased, installed, or used to monitor property in this state after April 14, 1989, unless it carries a label of approval or listing of a testing laboratory approved by the State Board of Insurance; provided, however, that the continued use or monitoring of equipment in place which otherwise

complied with applicable law at the time of its original placement, without extension, modification or alteration is not prohibited.

(c) Fire alarm devices that are not required by this statute or rules adopted under this statute and that do not impair the operation of fire alarm or fire detection devices required by this statute or the rules adopted under this statute are exempt from the requirement of a label of approval or listing of a testing laboratory approved by the Board if such devices are approved by the local authority having jurisdiction.

(d) [(f)] No fire detection or fire alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

(e) Each registered firm that employs persons that are exempt from the licensing provisions of this article pursuant to Sec. 3 (b) (10) of this article is required to appropriately train and supervise such exempt persons so as to ensure that each installation complies with the adopted provisions of National Fire Protection Standard Number 74 or other adopted standards, that each smoke or heat detector installed or sold carries a label or listing or approval by a testing laboratory approved by the State Board of Insurance, and that said exempt persons are knowledgeable in fire protection and the proper use and placement of detectors.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to S.B. 1490.

The motion prevailed by the following vote: Yeas 31, Nays 0.

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 848 ON SECOND READING

Senator Brooks asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 848, Relating to regulation of the operation of tow trucks.

There was objection.

Senator Brooks then moved to suspend the regular order of business and take up C.S.H.B. 848 for consideration at this time.

The motion was lost by the following vote: Yeas 14, Nays 15.

Yeas: Bivins, Brooks, Brown, Green, Haley, Johnson, Leedom, Lucio, Lyon, Moncrief, Ratliff, Rosson, Turner, Whitmire.

Nays: Armbrister, Barrientos, Carriker, Dickson, Ellis, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Montford, Sibley, Sims, Tejeda, Truan, Zaffirini.

Absent: Glasgow, Parker.

HOUSE BILL 2269 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2269, Relating to the creation of an auctioneer education and recovery fund; providing a penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2269 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2269** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 454 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 454, Relating to the speed limit on multi-lane divided highways.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 454 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 454** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

MOTION TO PLACE**HOUSE BILL 2329 ON SECOND READING**

Senator Sims moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2329, Relating to the definition of subterranean streams and the ownership of groundwater.

The motion was lost by the following vote: Yeas 17, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Bivins, Brown, Carriker, Dickson, Harris of Tarrant, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Ratliff, Sibley, Sims, Tejeda, Turner, Zaffirini.

Nays: Armbrister, Barrientos, Brooks, Ellis, Green, Haley, Johnson, Lyon, Parker, Rosson, Truan, Whitmire.

Absent: Glasgow, Harris of Dallas.

(Senator Brooks in Chair)

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 1411 ON SECOND READING**

Senator Green asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1411, Relating to regulation of persons transporting newspapers, newspaper supplements, or magazines for recycling.

There was objection.

Senator Green then moved to suspend the regular order of business and take up **C.S.H.B. 1411** for consideration at this time.

The motion was lost by the following vote: Yeas 14, Nays 15.

Yeas: Armbrister, Barrientos, Brooks, Dickson, Green, Haley, Henderson, Johnson, Krier, Ratliff, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brown, Carriker, Glasgow, Harris of Tarrant, Harris of Dallas, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Sibley, Sims, Truan.

Absent: Ellis, Rosson.

HOUSE BILL 50 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 50, Relating to a defense to the offense of criminal trespass if the actor is a fire fighter or emergency medical services personnel acting in the lawful discharge of an official duty under exigent circumstances.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 50 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 50** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 734**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 734** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS

ELLIS

KRIER

MONCRIEF

ROSSON

On the part of the Senate

NAISHTAT

LINEBARGER

DELCO

TAYLOR

R. LEWIS

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(President in Chair)

AT EASE

The President at 7:23 p.m. announced that the Senate would stand At Ease until 8:30 p.m.

IN LEGISLATIVE SESSION

Senator Halcy called the Senate to order as In Legislative Session at 8:30 p.m.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.C.R. 168	H.B. 1083
H.C.R. 210	H.B. 1175
H.C.R. 217	H.B. 1181
H.C.R. 233	H.B. 1214
H.B. 150	H.B. 1227
H.B. 154	H.B. 1298
H.B. 191	H.B. 1313
H.B. 507	H.B. 1376
H.B. 520	H.B. 1477
H.B. 582	H.B. 1584
H.B. 653	H.B. 1762
H.B. 703	H.B. 1826
H.B. 725	H.B. 1894
H.B. 779	H.B. 2769
H.B. 847	H.B. 2803
H.B. 894	H.B. 2818
H.B. 2855	
H.B. 270 (Signed subject to Art. III, Sec. 49a of the Constitution)	

COMMITTEE SUBSTITUTE HOUSE BILL 271 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 271, Relating to anatomical gifts.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 271 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 271** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1400 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1400, Relating to off-duty employment activities of officers of the Department of Public Safety.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1400 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1400** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2552 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2552, Relating to dates for conducting elections.

The bill was read second time.

Senator Carriker offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2552** by inserting a new SECTION 1 on line 4 on page 1 and renumbering the following sections:

SECTION 1. Section 2.025, Election Code, is amended to read as follows:

Sec. 2.025. RUNOFF ELECTION DAY. ~~[(a) Except as provided by Subsection (b), a]~~ A runoff election shall be held not earlier than the 20th day or later than the 30th day after the date the final canvass of the main election is completed.

~~[(b) A runoff election required to be held as a result of an election held on the first Saturday in May shall be held on the next to the last or last Saturday in May. This subsection supersedes a law outside this subchapter to the extent of a conflict notwithstanding Section 2.022.]~~

The committee amendment was read and was adopted by a viva voce vote.

Senator Carriker offered the following committee amendment to the bill:
Committee Amendment No. 2

Amend **H.B. 2552** by inserting the following after “bonds” on line 20: “or the levy of a tax for the maintenance of a public school or college.”

The committee amendment was read and was adopted by a viva voce vote.

Senator Carriker offered the following committee amendment to the bill:
Committee Amendment No. 3

Amend **H.B. 2552** by inserting a new Section 41.0041 beginning on line 8 of page 3:

Sec. 41.0041. ELECTION ON MEASURE AFTER PARTICULAR PERIOD. (a) If a law outside this code other than the constitution prohibits another election from being held on the same or a similar measure for a specified number of years after an election a measure, a subsequent election on the measure may be held on the corresponding uniform election date in the appropriate year, regardless of the fact that the date falls a number of days short of the requisite period.

(b) This section does not apply to a local option election held under the Alcoholic Beverage Code.

The committee amendment was read and was adopted by a viva voce vote.

Senator Carriker offered the following committee amendment to the bill:
Committee Amendment No. 4

Amend **H.B. 2552** as follows:

Add the following appropriately numbered sections and renumber subsequent sections accordingly:

SECTION 1. Chapter 13, Election Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. VOTER REGISTRATION ASSISTANCE BY CERTAIN STATE AGENCIES AND INSTITUTIONS

Sec. 13.061. DEPARTMENT OF PUBLIC SAFETY. (a) The Department of Public Safety shall provide to each person who applies in person at the department's offices for an original or renewal of a driver's license, a personal identification card, or a duplicate or corrected license or card an opportunity to complete a voter registration application form.

(b) The department shall prescribe and use a form that combines the department's application form for a license or card with an officially prescribed voter registration application form.

(c) An appropriate department employee shall routinely inform each applicant for a license or card of the opportunity to complete a voter registration application form and on request shall provide nonpartisan voter registration assistance to an applicant or other interested person on the premises.

(d) On receipt of a completed voter registration application, the department employee shall note the date of submission on the application and issue a receipt to the applicant containing the applicant's name, the employee's name, the location of the office, and the date of submission.

(e) At the end of each day a department office is regularly open for business, the manager of the office shall deliver by mail all completed voter registration applications to the voter registrar of the county in which the office is located.

(f) The date of submission of a completed voter registration application to a department employee is considered to be the date of submission to the voter registrar for the purpose of determining the effective date of registration only.

Sec. 13.062. DEPARTMENT OF HUMAN SERVICES, OTHER DESIGNATED STATE AGENCIES, AND INSTITUTIONS OF HIGHER EDUCATION. (a) The Texas Department of Human Services and any other appropriate state agency designated by the secretary of state shall make available to each person who applies in person at an agency's offices for assistance under a program administered by the agency and to any other interested person on the premises an official application form for voter registration by mail. An appropriate agency employee shall routinely inform each applicant for program assistance of the availability of voter registration application forms and on request shall provide nonpartisan voter registration assistance to an applicant or other interested person on the premises.

(b) An institution of higher education as defined by Section 61.003, Education Code, shall make available to students and employees of the institution and other interested persons on the premises official application forms for voter registration by mail at appropriate institution locations designated by the institution's governing body. An appropriate institution employee shall routinely inform students, employees, and other interested persons at a designated location of the availability of voter registration application forms and shall provide nonpartisan registration assistance to those persons on request.

(c) A person who obtains a voter registration application form under Subsection (a) or (b) is responsible for submitting the completed application to the appropriate voter registrar.

Sec. 13.063. ADDITIONAL PROCEDURES. The secretary of state shall prescribe any additional procedures necessary to implement this subchapter.

SECTION 2. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Section 14C to read as follows:

Sec. 14C. VOTER REGISTRATION. The Department shall provide nonpartisan voter registration assistance as provided by Section 13.061, Election Code.

SECTION 3. Section 22.001, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department shall provide nonpartisan voter registration assistance as provided by Section 13.062, Election Code.

SECTION 4. All costs for administration and operation of the programs authorized by this Act shall be paid for out of nonconstitutionally dedicated funds in State Highway Fund No. 006.

SECTION 5. Compliance with Section 13.061 or 13.062, Election Code, as added by this Act, is not required until December 1, 1991.

SECTION 6. Subsection (a), Section 14.052, Election Code, is amended to read as follows:

(a) In an election held on or after January 1 and before ~~December 15~~ [August 16] of an even-numbered year, a voter whose name appears on a precinct list of registered voters with the notation "R", or a similar notation, may vote in the election precinct in which the list is used if the voter resides in the county in which the voter is registered and, if applicable:

(1) resides in the political subdivision served by the authority ordering the election if the political subdivision is other than the county; or

(2) resides in the territory covered by the election in a less-than-countrywide election ordered by the governor or a county authority.

SECTION 7. Section 16.032, Election Code, is amended to read as follows:

Sec. 16.032. CANCELLATION FOLLOWING RETURN OF RENEWAL CERTIFICATE. If on ~~December 15~~ [August 16] of an even-numbered year a registered voter's name appears on the list of returned certificates, the registrar shall

cancel the voter's registration unless the name is to be deleted from the list under Section 15.023.

SECTION 8. Subsection (b), Section 16.037, Election Code, is amended to read as follows:

(b) If, after canceling a voter's registration under Section 16.032, the registrar receives an affidavit of residence executed by the voter under Section 14.052 at an election held before the date the voter's registration was required to be canceled [August 16], the registrar shall reinstate the registration.

The committee amendment was read.

On motion of Senator Carriker and by unanimous consent, the committee amendment was withdrawn.

Senator Carriker offered the following committee amendment to the bill:
Committee Amendment No. 5

Amend H.B. 2552 on page 2, lines 18-19 by striking the existing language and replacing it with the following language:

(11) an election held by a political subdivision using the convention method of election; or

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2552 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2552 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1816 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1816, Relating to the commission of peace officers.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1816 ON THIRD READING

Senator Ellis moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 1816 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 1020 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1020, Relating to special wine and beer permits for certain nonprofit organizations.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **C.S.H.B. 1020** by striking everything below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 27, Alcoholic Beverage Code, is amended by adding Subchapters B, C, D, and E to read as follows:

SUBCHAPTER B. SPECIAL THREE-DAY WINE AND BEER PERMIT

Sec. 27.11. AUTHORIZED ACTIVITIES. The holder of a special three-day wine and beer permit may sell for consumption on the premises for which the permit is issued, but not for resale, no more than 30 gallons of wine, and no more than 20 barrels of beer and malt liquors, containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume.

Sec. 27.12. FEE. The state fee for a special three-day wine and beer permit is \$30.

Sec. 27.13. ISSUANCE OF PERMIT. (a) The commission may issue a three-day wine and beer permit directly to a nonprofit charitable, civic, or religious organization for the temporary serving of wine and beer at a picnic, celebration, or similar event sponsored by the organization. No more than one permit may issued for an event.

(b) A nonprofit charitable, civic, or religious organization may be issued no more than one special three-day wine and beer permit in a 12-month period.

Sec. 27.14. APPLICATION OF WINE AND BEER RETAILER PERMIT PROVISIONS. A provision of this code that applies to a wine and beer retailer permit applies to a special three-day wine and beer permit unless the provision conflicts with a provision of this subchapter.

Sec. 27.15. RULES. The commission may adopt rules as necessary to implement and administer this subchapter.

SUBCHAPTER C. SPECIAL HISTORIC PRESERVATION WINE AND BEER PERMIT.

Sec. 27.21. AUTHORIZED ACTIVITIES. The holder of a special historic preservation wine and beer permit may, for a period not to exceed four days, sell for consumption on the premises of the national historic district for which the permit is issued, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume.

Sec. 27.22. FEE. The state fee for a special historic preservation wine and beer permit is \$200.

Sec. 27.23. ISSUANCE OF PERMIT. (a) The commission may issue a special historic preservation wine and beer permit directly to a nonprofit historic preservation organization for the temporary serving of wine and beer at a celebration, festival, or similar event sponsored annually by the organization for at least 30 years. No more than one permit may be issued for an event.

(b) A nonprofit historic preservation organization may be issued no more than one special historic preservation wine and beer permit in a 12-month period.

Sec. 27.24. **APPLICATION OF WINE AND BEER RETAILER PERMIT PROVISIONS.** A provision of this code that applies to a wine and beer retailer permit applies to a special historic preservation wine and beer permit unless the provision conflicts with a provision of this subchapter.

Sec. 27.25. **RULES.** The commission may adopt rules as necessary to implement and administer this subchapter.

SUBCHAPTER D. SPECIAL 90-DAY SEASONAL THEATER WINE AND BEER PERMIT.

Sec. 27.31. **AUTHORIZED ACTIVITIES.** The holder of a special seasonal theater wine and beer permit issued for a period not to exceed 90 days duration may sell for consumption on the premises of a coastal island state park for which the permit is issued, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume, during the hours of the performances of theatrical events in a coastal island state park, as declared in the application required hereunder.

Sec. 27.32. **FEE.** The state fee for a special seasonal theater wine and beer permit is \$200.

Sec. 27.33. **ISSUANCE OF PERMIT.** (a) The commission may issue a special seasonal theater wine and beer permit directly to a nonprofit charitable, civic, or religious organization holding a concession in a coastal island state park for the temporary serving of wine and beer at time of theatrical events sponsored by the organization.

(b) A nonprofit charitable, civic, or religious organization may be issued no more than one 90-day seasonal wine and beer permit in a calendar year.

Sec. 27.34. **APPLICATION OF WINE AND BEER RETAILER PROVISIONS.** A provision of this code that applies to a wine and beer retailer permit applies to a special seasonal theater wine and beer permit unless the provision conflicts with a provision of this subchapter.

Sec. 27.35. **RULES.** The commission may adopt rules as necessary to implement and administer this subchapter.

SUBCHAPTER E. PROTESTS BY PARKS AND WILDLIFE DEPARTMENT WITH REGARD TO CONCESSIONAIRES IN COASTAL ISLAND STATE PARKS. The Department may not by regulation prohibit the sale of wine, beer and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume by a nonprofit concessioner or the on-premises consumption of wine, beer and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume in an area of a coastal island state park assigned by the department for a nonprofit concessioner's use, but may protest the application for a special seasonal theater wine and beer permit when made in the appropriate manner for good cause shown.

SECTION 2. The title of Chapter 27, Alcoholic Beverage Code, is amended to read as follows:

CHAPTER 27. TEMPORARY AND SPECIAL WINE AND BEER RETAILER'S PERMITS PERMIT

SECTION 3. Sections 27.01-27.06, Alcoholic Beverage Code, are designated as Subchapter A, Chapter 27, of that code, as follows:

SUBCHAPTER A. TEMPORARY WINE AND BEER RETAILER'S PERMIT

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days

in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1020 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 1020 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 853 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 853, Relating to the continuation and operation of the Texas Structural Pest Control Board.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 853 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 853 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2885 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2885, Relating to public schools and public education.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 2885 by striking _____ and substituting the following:

Amend Section 21.557, Education Code, by adding subsection (i) to read as follows:

(i) Each school district shall maintain on file and expeditiously make available on the request of a member of the general public a copy of the report describing the district's overall compensatory education program for educationally disadvantaged students. The report must include sufficient detail to describe the overall compensatory education program offered on each campus and the activities and services provided on each campus from each funding source. The Commissioner of Education shall develop model report formats that districts may use for the report. The model formats must be designed to be easily understood by a member of the general public and may not be overly burdensome for districts to prepare. The commissioner shall submit the model formats to the Legislative Education Board for comment, and may not distribute the formats until the commissioner has received and considered those comments. Each school district shall prepare and periodically update the description of the district's compensatory education program to accurately reflect the programs and services currently provided to educationally disadvantaged students.

Amend C.S.H.B. 2885 by striking _____ and adding new _____. Section 16.152, Education Code, is amended by adding subsection (l) to read as follows:

(l) The Commissioner of Education shall withhold funds allocated under this section to a district that fails to timely prepare or make available on request of a member of the general public the report required under Section 21.557(i) of this code. The commissioner may restore withheld funds only when the commissioner is satisfied that the district has provided the information requested.

Amend C.S.H.B. 2885 by striking _____ and substituting the following: _____ subsection (c) is amended to read as follows:

"(c) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, may be used only for activities and services specifically designed to improve or enhance the quality of instruction provided under Section 21.557 of this code. Those services and activities may include:

- (1) student evaluations;
- (2) instructional material and equipment
- (3) instructional staff development;
- (4) salaries of instructional personnel
- (5) support services;
- (6) smaller class size than that of regular education classes;
- (7) educational technology;
- (8) peer tutoring
- (9) modified instructional design or teaching methodologies; and
- (10) extended school day or school year programs

~~which shall not exceed 15 percent, must be in used in providing remedial and compensatory education programs under Section 21.557 of this code, and the district must account for the expenditure of state funds by program and campus. Funds allocated under this section, other than the indirect cost allotment, shall only be expended for supplemental purposes in addition to those programs and services funded under the regular education program of the district from all funding sources."~~

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the amendment was withdrawn.

Question—Shall the bill be passed to third reading?

On motion of Senator Parker and by unanimous consent, further consideration of C.S.H.B. 2885 was postponed.

HOUSE BILL 201 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 201, Relating to hearings conducted by appraisal review boards on taxpayer protests.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 201** as follows:

(1) On page 1, line 33, between the word "protest" and the semicolon, insert "if the owner is representing himself, or to an agent representing the owner if requested by the agent".

(2) On page 1, line 40, between "Section 41.66" and the period, insert "to the property owner initiating the protest if the owner is representing himself, or to an agent representing the owner if requested by the agent".

The amendment was read and was adopted by a viva voce vote.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 201** as follows:

(1) In added Section 41.461(a)(3), Tax Code (in SECTION 1 of the bill), after "Section 41.66" and before the period, insert "to the property owner".

(2) In added Section 41.461(b)(1), Tax Code (in SECTION 1 of the bill), after "\$10" and before the semicolon, insert "for each residence".

(3) Strike added Section 41.461(b)(2), Tax Code (in SECTION 1 of the bill) and substitute:

"(2) the total charge for copies provided in connection with a protest of the appraisal of a single unit of property subject to appraisal, other than residential property, may not exceed \$25."

(4) Strike added Section 41.67(d), Tax Code (in SECTION 3 of the bill), and substitute the following:

"(d) Information that was previously requested under Section 41.461 by the protesting party or the chief appraiser that was not made available to the protesting party or the chief appraiser at least 14 days before the scheduled or postponed hearing may not be used as evidence in the hearing."

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 201 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 201** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2885 ON SECOND READING**

The Senate resumed consideration of **C.S.H.B. 2885** on second reading.

Question—Shall the bill be passed to third reading?

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2885** by striking everything below the enacting clause and substituting the following:

SECTION 1. Section 16.002(b), Education Code, as amended by **S.B. 351**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) The Foundation School Program consists of two tiers to provide for the purposes specified by Subsection (a) of this section. The first tier guarantees sufficient financing for all school districts to provide a basic program of education that meets accreditation and other legal standards. The second tier provides a guaranteed yield system of financing to provide all school districts with substantially equal access to funds to provide an enriched program and additional funds for facilities.

SECTION 2. Section 16.009(a), (b), and (c), Education Code, as amended by **S.B. 351**, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(a) The revenue limit is an amount equal to 110 percent of the amount of state and local funds guaranteed under the Foundation School Program per student in weighted average daily attendance to each [a] school district at [with] a total tax rate of \$0.25 [\$1.25] per \$100 of taxable value of property as calculated for the 1994-1995 school year.

(b) Not later than April 15, the commissioner of education shall estimate the revenue limit for each school district for the current school year and shall certify that amount to each school district.

(c) Not later than August 15 of each year the commissioner of education shall determine as nearly as possible for the current school year:

(1) the total amount of state and local funds per student in weighted average daily attendance available in each school district; and

(2) the total amount of state and local funds per student in weighted average daily attendance required for debt service in each school district.

SECTION 3. Section 16.206(e), Education Code, as added by **S.B. 351**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) The foundation school fund budget committee by rule shall adopt adjustments to the Foundation School Program for resource cost variations beyond the control of school districts to apply beginning with the 1993-1994 school year. The foundation school fund budget committee shall report the adjustments adopted to the legislature and the commissioner of education. If the foundation school fund budget committee fails to adopt the adjustments by November [September] 1, 1992, the commissioner of education by rule shall adopt adjustments not later than December [October] 1, 1992.

SECTION 4. Section 16.254(a), Education Code, as amended by **S.B. 351**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The commissioner of education shall determine annually:

(1) the amount of money necessary to operate a Foundation School Program in each school district;

(2) the amount of local funds due the school district from the local fund assignment of the [assigned to each] county education district [for the support of the program that is distributed to the district under Subchapter J of this code]; and

(3) the amount of state available school funds distributed to each school district.

SECTION 5. Section 16.302(a), Education Code, as amended by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the local fund assignment of the county education district in which the school district is located up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 16.303 of this code, is determined by the formula:

$$GYA = (GL \times WADA \times DTR \times 100) - LR$$

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is \$21.50 for the 1991-1992 school year, \$22.50 for the 1992-1993 school year, \$26 for the 1993-1994 school year, and \$28 for each school year thereafter, or a greater amount for any year provided by appropriation, or a greater amount adopted by the foundation school fund budget committee under Section 16.256(d) of this code for the 1993-1994 or 1994-1995 school year or thereafter;

"WADA", except as provided by Section 16.206 of this code, is the number of weighted students in average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters C and D of this chapter, less any allotments to the district for transportation, career ladder supplements, or technology and 50 percent of the adjustment under Section 16.102 of this code, by the basic allotment for the applicable year;

"DTR" is the district enrichment and facilities tax rate of the school district, which is determined by dividing the total amount of taxes [levied and] collected by the school district for the applicable school year by the quotient of the district's taxable value of property as determined under Section 11.86 of this code divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Section 11.86 of this code divided by 100.

SECTION 6. Section 16.501, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subsections (d) and (e) to read as follows:

(d) If the total amount available for distribution by the county education district exceeds the county education district's local share under Section 16.252 of this code, the county education district shall retain the excess amount for distribution in succeeding years.

(e) If the total amount available for distribution by the county education district is less than the county education district's local share under Section 16.252 of this code, the distributions shall be made under rules adopted by the commissioner of education.

SECTION 7. Sections 20.941(a) and (b), Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(a) Each school district in this state is included in a county education district. A county education district is composed of all school districts that are assigned to [whose administrative offices are located in] a single county in the 1990-1991 Texas School Directory published by the Central Education Agency, except as provided by Subsection (b) of this section.

(b) The school districts that are assigned to a county [whose administrative offices are located] in each of the following groups of counties in the 1990-1991 Texas School Directory published by the Central Education Agency constitute a county education district:

- (1) Midland and Andrews
- (2) Victoria and Calhoun
- (3) Armstrong, Carson, and Randall
- (4) Liberty and Chambers
- (5) Bailey and Cochran
- (6) Gaines, Borden, Dawson, Lubbock, Lynn, Terry, and Yoakum
- (7) Howard and Glasscock
- (8) Hale and Hockley
- (9) Schleicher, Tom Green, Sterling, and Irion
- (10) Hidalgo and Kenedy
- (11) Kent, Crosby, Fisher, Garza, and Scurry
- (12) King, Cottle, Knox, and Dickens
- (13) Limestone and Falls
- (14) Lipscomb, Gray, Hemphill, Hutchinson, Ochiltree, and Roberts
- (15) Mason, San Saba, and Llano
- (16) Matagorda, Jackson, and Wharton
- (17) Frio and McMullen
- (18) Pecos, Crockett, Jeff Davis, Kinney, Presidio, and Val Verde
- (19) Bee and Refugio
- (20) Sherman, Dallam, Hansford, Moore, and Potter
- (21) Somervell, Bosque, Erath, Hill, and Johnson
- (22) Kimble and Sutton
- (23) Brewster and Terrell
- (24) Upton, Crane, Ector, and Reagan
- (25) Wheeler, Collingsworth, and Donley
- (26) Loving, Winkler, Culberson, Reeves, and Ward
- (27) Starr and Zapata
- (28) Stonewall and Jones
- (29) Aransas and San Patricio
- (30) Leon and Anderson
- (31) Panola and Shelby

SECTION 8. Section 20.943, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A county education district has the authority granted to other independent school districts under:

- (1) Section 23.26(a) of this code;
- (2) Section 23.26(c) of this code, as it applies to personal property;
- (3) Subchapter C, Chapter 23, of this code; and
- (4) Subchapter E, Chapter 23, of this code.

(d) A county education district may enter into contracts and may employ personnel only as necessary for the performance of the duties of the district.

(e) The commissioner of education may adopt rules relating to the operation and administration of county education districts.

SECTION 9. Section 20.945, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 20.945. LEVY OF TAX; ASSESSMENT AND COLLECTION OF TAXES. (a) The board of trustees of a county education district shall levy a tax at a rate necessary to collect its local fund assignment ~~[equal to the rate required]~~ under Section 16.252 of this code not later than September 1 of each year or as soon thereafter as practicable.

(b) Unless the board of trustees of the county education district provides for the assessment and collection of taxes levied by the district through a contract with one or more appraisal districts or taxing units, each component school district within a county education district shall be responsible for the assessment and collection of taxes levied by the board of trustees of the county education district on all taxable property within the component school district at the same time and in the same manner as it assesses and collects its own taxes. Each component school district shall bear the cost of assessing and collecting taxes levied by the county education district, and shall have the legal authority to take actions on behalf of the county education district to ensure the efficient collection of these taxes. [The board may contract with one or more entities to assess and collect taxes for the benefit of the district].

SECTION 10. Section 20.946, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 20.946. RESIDENCE HOMESTEAD EXEMPTIONS. (a) Subject to Subsection (f) of this section, the ~~[The]~~ voters of a county education district may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone, at an election held in the district as provided by this section.

(b) At the first regular meeting of the board, the board [directors] shall order an election to be held on August 10, 1991 ~~[May 2, 1992]~~, on the question of exempting from ad valorem taxation by the district a percentage of the market value of a residence homestead in the district. The amount of the exemption shall be the maximum percentage exemption as provided by Article VIII, Section 1-b(e), of the Texas Constitution. If the exemption is approved, it takes effect only if this section remains in effect after August 10, 1991, under Subsection (f) of this section.

(c) If the exemption is not adopted at the 1991 ~~[1992]~~ election and the board subsequently receives a valid petition requesting an election for the purpose of adopting the exemption, the board shall hold another election on the proposition. The petition must be signed by a number of registered voters of the district equal to at least five percent of the registered voters residing in the district and must state the percentage of market value to be exempted. The board shall order the election to be held on an authorized election date, as prescribed by Section 41.001, Election Code, occurring not later than 60 days after the date on which the petition is received by the board. If at the election the majority of the votes are cast against the proposition, another election for the same purpose may not be held earlier than the corresponding uniform election date three years after the date of the preceding election ordered under this subsection.

(d) At an election to authorize the exemption, the ballot shall be prepared to permit voting for or against the proposition: "The exemption of _____ percent of the market value of the residence homestead from ad valorem taxation in (name of the county education district)."

(e) For elections ordered under this section, each component school district shall conduct the election and deliver the canvass of the vote to the county education district board of trustees. The county education district board shall conduct a final canvass not later than the second day after the receipt of all school district election returns, and prepare a tabulation of the total number of votes received in each school district and the sum of the school district totals. The proposition is approved only if the majority of the votes reflected in the sum of

school district totals favors the proposition. The county education district board shall declare the results and retain the election returns and tabulations for the period for preserving precinct election records.

(f) This section remains in effect after August 10, 1991, ~~[takes effect]~~ only if the constitutional amendment proposed by the 72nd Legislature, Regular Session, providing an exemption of a percentage of the market value of a residence homestead from ad valorem taxation in county education districts ~~[for tax year 1991 and]~~ by election of the voters ~~[in future tax years]~~, is adopted. If that amendment is not adopted, this section has no effect.

SECTION 11. Subchapter G, Chapter 20, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Sections 20.949, 20.950, and 20.951 to read as follows:

Sec. 20.949. CHANGE OF COUNTY EDUCATION DISTRICT ASSIGNMENT. (a) If a school district is assigned under Section 20.941 of this code to a county other than the county where the school district's administrative offices are located, the school district may submit a request to the commissioner of education for reassignment to the county in which the school district's administrative offices are located.

(b) The commissioner of education shall grant the request for reassignment if the reassignment does not result in a taxable value of property in the county education district from which the district is reassigned or to which the district is reassigned in excess of \$280,000 per weighted student in average daily attendance, or a value set by the foundation school fund budget committee.

Sec. 20.950. DISABLED AND ELDERLY HOMESTEAD EXEMPTIONS. (a) Subject to Subsection (f) of this section, the voters of a county education district may exempt from ad valorem taxation not less than \$3,000 of the appraised value of the residence homestead of an individual who is disabled or is 65 or older at an election held in the district as provided by this section.

(b) At the first regular meeting of the board, the board shall order an election to be held on August 10, 1991, on the question of exempting from ad valorem taxation by the district an amount of the market value of a residence homestead in the district of an individual who is disabled or is 65 or older. The amount of the exemption for individuals who are disabled and the amount of the exemption for individuals who are 65 or older shall each be \$10,000. If the exemption is approved, it takes effect only if this section remains in effect after August 10, 1991, under Subsection (f) of this section.

(c) If the exemption is not adopted at the 1991 election and the board subsequently receives a valid petition requesting an election for the purpose of adopting the exemption, the board shall hold another election on the proposition. The petition must be signed by a number of registered voters of the district equal to at least five percent of the registered voters residing in the district and must state the amount to be exempted. The board shall order the election to be held on an authorized election date, as prescribed by Section 41.001, Election Code, occurring not later than 60 days after the date on which the petition is received by the board. If at the election the majority of the votes are cast against the proposition, another election for the same purpose may not be held earlier than the corresponding uniform election date three years after the date of the preceding election ordered under this subsection.

(d) At an election to authorize the exemption, the ballot shall be prepared to permit voting for or against the proposition: "The exemption of \$_____ of the market value of the residence homestead of an individual who is disabled and of \$_____ of the market value of the residence homestead of an individual who is 65 or older from ad valorem taxation in (name of the county education district)."

(e) For elections ordered under this section, each component school district shall conduct the election and deliver the canvass of the vote to the county education district board of trustees. The county education district board shall conduct a final canvass not later than the second day after the receipt of all school district election returns, and prepare a tabulation of the total number of votes received in each school district and the sum of the school district totals. The proposition is approved only if the majority of the votes reflected in the sum of school district totals favors the proposition. The county education district board shall declare the results and retain the election returns and tabulations for the period for preserving precinct election records.

(f) This section remains in effect after August 10, 1991, only if the constitutional amendment proposed by the 72nd Legislature, Regular Session, providing an exemption of not less than \$3,000 of the market value of a residence homestead of an individual who is disabled or who is 65 or older from ad valorem taxation in county education districts by election of the voters, is adopted. If that amendment is not adopted, this section has no effect.

Sec. 20.951. TANGIBLE PERSONAL PROPERTY. (a) Subject to Subsection (f) of this section, the voters of a county education district may provide for the taxation of tangible personal property exempt under Section 11.14(a), Tax Code, at an election held in the district as provided by this section.

(b) At the first regular meeting of the board, the board shall order an election to be held on August 10, 1991, on the question of taxation by the district of tangible personal property exempt under Section 11.14(a), Tax Code. If the proposition is approved, it takes effect only if this section remains in effect after August 10, 1991, under Subsection (f) of this section.

(c) If the proposition is not adopted at the 1991 election and the board subsequently receives a valid petition requesting an election for the purpose of providing for the taxation of tangible personal property exempt under Section 11.14(a), Tax Code, the board shall hold another election on the proposition. The petition must be signed by a number of registered voters of the district equal to at least five percent of the registered voters residing in the district. The board shall order the election to be held on an authorized election date, as prescribed by Section 41.001, Election Code, occurring not later than 60 days after the date on which the petition is received by the board. If at the election the majority of the votes are cast against the proposition, another election for the same purpose may not be held earlier than the corresponding uniform election date three years after the date of the preceding election ordered under this subsection.

(d) At an election to authorize the exemption, the ballot shall be prepared to permit voting for or against the proposition: "The taxation of all tangible personal property, other than manufactured homes, in (name of the county education district) that is not held or used for the production of income."

(e) For elections ordered under this section, each component school district shall conduct the election and deliver the canvass of the vote to the county education district board of trustees. The county education district board shall conduct a final canvass not later than the second day after the receipt of all school district election returns, and prepare a tabulation of the total number of votes received in each school district and the sum of the school district totals. The proposition is approved only if the majority of the votes reflected in the sum of school district totals favors the proposition. The county education district board shall declare the results and retain the election returns and tabulations for the period for preserving precinct election records.

(f) This section remains in effect after August 10, 1991, only if the constitutional amendment proposed by the 72nd Legislature, Regular Session, providing for the taxation of tangible personal property, except structures used or

occupied as a residence or property used or held for the production of income, in county education districts by election of the voters is adopted.

SECTION 12. Sections 20.09(a), (c), and (d), Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(a) Except as provided by Subsections (c) and (d) of this section, a [A] school district may not impose a total [effective] tax rate on the \$100 valuation of taxable property that results in a levy that exceeds the levy that results from applying the following rate to the district's taxable value of property as determined under Section 11.86 of this code:

(1) \$0.78 for the 1991 tax year;

(2) \$0.68 for the 1992 tax year;

(3) \$0.58 for the 1993 tax year; and

(4) \$0.50 for each subsequent tax year [in excess of the difference between \$1.50 and the rate levied by the county education district in which the district is located].

(c) The portion of the total tax rate required to collect the taxes pledged and levied [A district may impose a rate that exceeds the limitation under Subsection (a) of this section if the additional tax collections are necessary] for the payment of principal and interest on debt authorized to be issued by an election held on or before April 1, 1991, and issued before September 1, 1992, is not subject to the tax limitation under Subsection (a) of this section.

(d) Prior to the issuance of bonds other than bonds exempt under Subsection (c) of this section, a district shall demonstrate to the attorney general with respect to the proposed bond issue a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds, other than bonds exempt under Subsection (c) of this section, from a tax at a debt rate not to exceed \$0.50 per \$100 valuation and a total tax rate not to exceed the maximum rate under Subsection (a) of this section. On approval of the bonds by the attorney general and issuance by the district, the district may levy a tax exceeding the limits established in Subsection (a) of this section if necessary to pay the principal of and interest on the bonds without reducing maintenance and operations expenditures for the district. [A district may impose a rate that exceeds the limitation under Subsection (a) of this section to the extent necessary for the payment of principal and interest on debt, without reducing maintenance and operations expenditures, for any tax year in which the district's tax rate for the preceding tax year is insufficient to generate the amount necessary for the payment of principal and interest on debt solely because of a reduction in the taxable value of property in the district. To impose a rate that exceeds the limitation, a district must apply to the commissioner for a waiver of the limit and present evidence that the waiver is necessary solely because of a reduction in the taxable value of property in the district. The commissioner shall grant the waiver if the district is entitled to it under this subsection.]

SECTION 13. Section 6.02(b), Tax Code, as amended by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) A taxing unit other than a county education district that has boundaries extending into two or more counties may choose to participate in only one of the appraisal districts. In that event, the boundaries of the district chosen extend outside the county to the extent of the unit's boundaries. To be effective, the choice must be approved by resolution of the board of directors of the district chosen. A county education district that has boundaries extending into two or more counties must participate in each appraisal district in which one of its component school districts participates for purposes of appraisal of the component school district's territory [the appraisal district for the county in which the county education district has its administrative offices].

SECTION 14. Sections 11.13(d) and (e), Tax Code, are amended to read as follows:

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit other than a county education district; [or]

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a [the] taxing unit other than a county education district, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit; or

(3) by a favorable vote of a majority of the qualified voters of a county education district at an election held under Section 20.950, Education Code.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is \$3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section; [or]

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section; or

(3) the proposition approved at an election held under Section 20.950, Education Code.

SECTION 15. Sections 11.14(c), (d), and (e), Tax Code, are amended to read as follows:

(c) The governing body of a taxing unit, other than a county education district, by resolution or order, depending upon the method prescribed by law for official action by that governing body, may provide for taxation of tangible personal property exempted under Subsection (a). The voters of a county education district, by an election held under Section 20.951, Education Code, may provide for taxation of tangible personal property exempted under Subsection (a). If [the governing body of] a taxing unit provides for taxation of tangible personal property as provided by this subsection, the exemption prescribed by Subsection (a) does not apply to that unit.

(d) The central appraisal district for the county shall determine the cost of appraising tangible personal property required by a taxing unit [governing body] under the provisions of Subsection (c) and shall assess those costs to the taxing unit or taxing units which provide for the taxation of tangible personal property.

(e) A political subdivision other than a county education district choosing to tax property otherwise made exempt by this section, pursuant to Article VIII, Section 1(e), of the Texas Constitution, may not do so until the governing body of the political subdivision has held a public hearing on the matter, after having given notice of the hearing at the times and in the manner required by this subsection, and has found that the action will be in the public interest of all the residents of that political subdivision. At the hearing, all interested persons are entitled to speak and present evidence for or against taxing the property. Not later than the 30th day prior to the date of a hearing held under this subsection, notice of the hearing must be:

(1) published in a newspaper having general circulation in the political subdivision and in a section of the newspaper other than the advertisement section;

(2) not less than one-half of one page in size; and

(3) republished on not less than three separate days during the period beginning with the 10th day prior to the hearing and ending with the actual date of the hearing.

SECTION 16. Sections 14 and 15 of this Act and Section 19, S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, take effect only if the constitutional amendment proposed by the 72nd Legislature, Regular Session, 1991, providing an exemption of a percentage of the market value of a residence homestead from ad valorem taxation in county education districts by election of the voters, an exemption of an amount of the market value of a residence homestead of an individual who is disabled or is 65 or older from ad valorem taxation in county education districts by election of the voters, and taxation in a county education district of tangible personal property other than structures used or occupied as a residence and property used or held for the production of income by election of the voters, is adopted. If that amendment is not adopted, those sections have no effect.

SECTION 17. For 1991, a district's effective maintenance rate under Section 26.08(a), Tax Code, and its effective maintenance and operations rate under Section 26.08(e), Tax Code, is reduced by the rate of \$0.72. If the reduction results in an amount that is less than zero, the applicable rate is zero.

SECTION 18. Section 16.052(b), Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) Each school district must provide for not less than 20 [40] hours of staff development training under guidelines provided by the commissioner of education. The training provided must include technology training and must occur during regular hours of required teacher service. On the request of a teacher, a school district may credit the teacher compensatory time to be applied toward the number of training hours required under this subsection for workshops, conferences, or other professional training that the teacher has attended.

SECTION 19. Section 16.052, Education Code, is amended by adding Subsection (d) to read as follows:

(d) Each school district may reserve three hours of the first preparation day provided each school year under Subsection (a) of this section for faculty staff meetings.

SECTION 20. Section 26, S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 26. [~~Chapter 18 and~~] Sections 14.061, 14.062, 14.063(a), 20.46, 20.47, and 21.136(e), Education Code, and Section 26.08(h), Tax Code, are repealed.

SECTION 21. Section 16.011, Education Code, and Subchapter G, Chapter 20, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, take effect immediately.

SECTION 22. Section 28, S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 23. (a) Except as provided by this section and Section 80 of this Act, this Act takes effect August 26, 1991.

(b) Section 21 and this section of this Act, and the following sections of the Education Code, take effect on the earliest date that these sections may take effect under Article III, Section 39, of the Texas Constitution:

(1) Section 20.946, Education Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, and amended by this Act; and

(2) Sections 20.950 and 20.951, Education Code, as added by this Act.

SECTION 24. Section 20.904, Education Code, is amended to read as follows:

Sec. 20.904. ELIGIBILITY. To be eligible for approval by the commissioner, bonds must be issued under Subchapter A of this chapter or under Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), by an accredited school district.

SECTION 25. Section 21.032, Education Code, is amended by adding Subsection (c) to read as follows:

(c) Unless specifically exempted by Section 21.033 of this code, a student enrolled in a public school district must attend tutorial classes required by the district under Section 21.103(b) of this code. A school district is not required to provide transportation services to accommodate such students.

SECTION 26. Subsection (e), Section 312.002, Tax Code, as added by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) A county education district may not enter into a tax abatement agreement under this chapter; however, a tax abatement agreement entered into by a school district before September 1, 1991, applies to taxes collected by both the school district and the county education district.

SECTION 27. Subchapter B, Chapter 13, Education Code, is amended by adding Section 13.050 to read as follows:

Sec. 13.050. CENTERS FOR PROFESSIONAL DEVELOPMENT AND TECHNOLOGY. (a) The State Board of Education and the Texas Higher Education Coordinating Board may develop the process for the establishment of centers for professional development through the colleges of education for the purpose of integrating technology and innovative teaching practices in the preservice and staff development training of teachers and administrators. An institution of higher education with an approved teacher education program may develop a center through a collaborative process involving public schools, regional education service centers, and other entities or businesses. A center may contract with other entities to develop materials and provide training.

(b) On application by a center the State Board of Education shall make grants to the center for its programs from funds derived from gifts, grants, and legislative appropriations for that purpose. The board shall award the grants on a competitive basis according to requirements established by the board's rules, which shall be developed in consultation with the Texas Higher Education Coordinating Board.

(c) A center may provide preservice and professional staff development training for teachers and administrators that:

(1) assists in the development of strategies for the achievement of academic excellence and for relating campus performance objectives to student outcomes;

(2) promotes effective teaching practices that incorporate technology and provide an expanded vision and understanding of technological applications and skills; or

(3) is coordinated with the textbook adoption cycle and the restructuring of the curriculum.

(d) A center may develop and implement a comprehensive field-based teacher education program to supplement the student teaching hours required in Section 13.036(b) of this chapter. This comprehensive field-based teacher program must:

(1) be designed on the basis of current research into state-of-the-art teaching practices, curriculum theory and application, evaluation of student outcomes, and the effective application of technology; and

(2) have rigorous internal and external evaluation procedures that focus on content, delivery systems, and teacher and student outcomes.

(e) For exemplary programs, the commissioner of education, in consultation with the commissioner of higher education, may waive the provision of Section 13.036(b) of this code concerning student teaching hours or concerning illness, tragedy, or military service.

(f) A center, in conjunction with a school district, may establish a laboratory school that offers:

(1) one or more "classrooms of the future" that serve as state-of-the-art demonstration sites for the use of technology and effective teaching practices; or

(2) one or more professional development laboratories that demonstrate state-of-the-art effective teaching practices utilizing technology.

(g) A center may provide summer institutes that utilize college or university faculty or other qualified professionals to provide specialized training in:

- (1) the effective application of technology skills;
- (2) innovative and visionary strategies for effective teaching;
- (3) district-level and campus-level collaborative decision making that focuses on student achievement;
- (4) site-based management for teachers, administrators, and school board trustees that focuses on student achievement; or
- (5) technical writing and the development of innovative grant proposals.

(h) A center may target one or more of its programs at the recruitment, training, or retraining of qualified minorities and other persons as teachers in subject areas for which there is a shortage of teachers.

(i) The commissioner of education shall coordinate the activities of the centers with the activities of the center for educational technology authorized in Section 14.044 of this code.

SECTION 28. Subsection (b), Section 21.7531, Education Code, is amended to read as follows:

(b) Performance on the indicators required by this section shall be compared to projections [a projection] of expected performance for purposes of evaluation, accreditation, and determination of exemplary status. The indicators must be based on information that is disaggregated with respect to race, gender, age, and socioeconomic status and must include:

- (1) the results, through longitudinal studies, of criterion-referenced assessment instruments required under Section 21.551 of this code;
- (2) the results of tests with national norms, including the Scholastic Aptitude Test and the American College Test;
- (3) high school graduation rates;
- (4) student attendance;
- (5) student enrollment in advanced academic courses; and
- (6) the degree of change from one school year to the next in the items under Subdivisions (1) through (5) of this subsection, considering the impact of student mobility.

SECTION 29. Section 21.757, Education Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) If a campus is a low-performing campus, as determined on the basis of the indicators adopted under Section 21.7531 of this code ~~[is rated accredited advised or academically unaccredited]~~, the commissioner may [shall] take the following actions to the extent the commissioner determines necessary:

- (1) appoint a school intervention team to assist the campus in the improvement of its performance [appointment of a monitor, master, or management team to oversee the operations of the campus]; or
- (2) order the board of trustees or the superintendent to take certain actions relating to the operations of the campus.

(i) A school intervention team appointed under Subsection (b)(1) of this section may consist of teachers, principals, other school professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner of education to serve as members of a team. The team shall conduct an on-site assessment of the school in need of assistance and make recommendations for improvement to the school committee established under Section 21.931 of this code, the superintendent, the school board, and the commissioner. The recommendations may include:

- (1) reallocation of resources and technical assistance;
- (2) changes in school procedures or operations;
- (3) staff development for instructional and administrative staff;
- (4) intervention for individual administrators or teachers;
- (5) waivers from policies or regulations of the board or commissioner;

and

- (6) other actions the team considers appropriate.

(i) A school intervention team appointed under Subsection (b)(1) of this section shall work with the school staff to develop an improvement plan to address the needs identified through the on-site assessment conducted under Subsection (i) of this section. The team shall submit the plan to the commissioner, the school board, the school committee established under Section 21.931 of this code, and the superintendent. The school staff shall implement the changes specified in the improvement plan within a period of one year after the date the plan is submitted. The commissioner shall monitor the progress of the school to determine whether sufficient progress has been made or if further action is warranted.

SECTION 30. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.931 to read as follows:

Sec. 21.931. SITE-BASED DECISION MAKING. (a) Each school district shall develop and implement a plan for site-based decision making not later than September 1, 1992. Each district shall submit its plan to the commissioner of education for approval.

- (b) Each district's plan:

- (1) shall establish school committees;

(2) may expand on the process established by the district under Section 21.7532 of this code for the establishment of campus performance objectives; and

(3) shall outline the role of the school committees regarding decision making related to goal setting, curriculum, budgeting, staffing patterns, and school organization.

(c) A school committee established under this section shall include community representatives. The community representatives may include business representatives.

(d) The commissioner may not approve a plan that the commissioner determines contains one or more provisions that may be construed as limiting or affecting the power of the board of trustees of the school district to govern and manage the district or as limiting the responsibilities of the trustees.

(e) The commissioner shall identify or make available to school districts various models for implementing site-based decision making under this section not later than January 1, 1992. The commissioner shall arrange for training in site-based decision making through one or more sources for school board trustees, superintendents, principals, teachers, parents, and other members of school committees.

(f) Nothing in this section may be construed as creating a new cause of action or as requiring collective bargaining.

SECTION 31. Subsection (e), Section 13.353, Education Code, is amended to read as follows:

(e) From funds appropriated for that purpose, the Central Education Agency shall allocate an amount each year for the identification, adaptation, development, and evaluation of professional development programs and materials; training of trainers; and technical assistance in the development of general management and leadership development skills, including skills necessary to implement Sections 21.7532, [and] 21.930, and 21.931 of this code. The State Board of Education may designate special projects and development activities to be carried out with such

funds. The manner in which such funds are utilized shall be reported annually to the commissioner of education.

SECTION 32. Section 2.01, Education Code, is amended to read as follows:

Sec. 2.01. **PUBLIC EDUCATION IN GENERAL; GOALS FOR PUBLIC EDUCATION.** The objective of state support and maintenance of a system of public education is education for citizenship and is grounded upon conviction that a general diffusion of knowledge is essential for the welfare of Texas and for the preservation of the liberties and rights of citizens. The goals of public education are as follows:

GOAL A: All students shall have access to an education of high quality that will prepare them to fully participate currently and in the future in the social, economic, and educational opportunities available in Texas.

GOAL B: ~~[an opportunity to benefit from an appropriate education:]~~ The achievement gap between educationally disadvantaged students and other populations will be closed. Through enhanced dropout prevention efforts, the graduation rate will be raised to 95 percent of students who enter the seventh grade.

GOAL C [B]: The state shall be above ~~[within]~~ national norms for student performance.

GOAL D [C]: A well-balanced and appropriate curriculum will be provided to all students.

GOAL E [D]: Qualified and effective personnel will be attracted and retained. Adequate and competitive compensation commensurate with responsibilities will be ensured. Qualified staff in critical shortage areas will be recruited, trained, and retained.

GOAL F [E]: The organization and management of all levels of the educational system will be productive, efficient, and accountable.

GOAL G [F]: Instruction and administration will be improved through research that identifies creative and effective methods. Demonstration programs will be developed and local initiatives encouraged for new instructional arrangements and management techniques. Technology will be used to increase the equity, efficiency, and effectiveness of student learning [classroom instruction], instructional management, staff development, and administration.

SECTION 33. Subchapter O, Chapter 21, Education Code, is amended by adding Sections 21.5511 through 21.5513 to read as follows:

Sec. 21.5511. ESSENTIAL SKILLS AND KNOWLEDGE. (a) The State Board of Education by rule shall establish the essential skills and knowledge that all students should learn to achieve the goals provided under Section 2.01 of this code.

(b) Before adopting rules under this section, the board shall consider the comments of the Legislative Education Board as required under Section 11.24 of this code.

Sec. 21.5512. ASSESSMENT PROGRAM. (a) The State Board of Education by rule shall create and implement a statewide assessment program that is primarily performance-based to ensure school accountability for student achievement that achieves the goals provided under Section 2.01 of this code.

(b) Before adopting rules under this section, the board shall consider the comments of the Legislative Education Board as required under Section 11.24 of this code.

(c) On adoption of the statewide assessment program, the State Board of Education shall report to the legislature the costs of the program during the first five years of its implementation.

Sec. 21.5513. COMMITTEE ON STUDENT LEARNING. (a) The State Board of Education may not adopt rules under Section 21.5511 or 21.5512 of this code until it has received and considered the recommendations of the Texas committee on student learning established under this section.

(b) The Texas committee on student learning is composed of:

(1) four persons appointed by the governor of whom one must be an elementary school teacher, one must be a secondary school teacher, and one must be a campus- or district-level administrator;

(2) four persons appointed by the lieutenant governor of whom one must be an elementary school teacher, one must be a secondary school teacher, and one must be a campus- or district-level administrator;

(3) four persons appointed by the speaker of the house of representatives of whom one must be an elementary school teacher, one must be a secondary school teacher, and one must be a campus- or district-level administrator;

(4) the commissioner of education;

(5) the commissioner of higher education;

(6) the chairman of the State Board of Education; and

(7) a representative of the teacher education programs at public institutions of higher education in the state, appointed by the deans of the colleges of education at those institutions.

The makeup of the committee as a whole shall fairly represent the ethnic, racial, and gender balance of the state.

(c) Members of the committee serve two-year terms and may be reappointed to office.

(d) The governor, lieutenant governor, and the speaker of the house of representatives shall solicit names of persons recommended for consideration for appointment to the committee from statewide organizations representing persons from each of the following categories:

(1) classroom teachers;

(2) principals;

(3) superintendents;

(4) school board members;

(5) business leaders; and

(6) parents of public school students.

(e) The Texas Higher Education Coordinating Board shall coordinate the process of selecting the person appointed to the committee by the deans of the colleges of education at the public institutions of higher education in the state.

(f) The governor shall designate the chairman of the committee. The chairman shall call the first meeting of the committee for a date not later than January 15, 1992.

(g) At each regular meeting of the Legislative Education Board the committee shall report to the board its progress regarding:

(1) the essential knowledge and skills identified by the committee for elementary and secondary students, including at a minimum knowledge and skills in the areas of reading, writing, speaking, mathematics, and critical thinking;

(2) a statewide assessment program developed by the committee for elementary students that is primarily performance-based, uses a variety of assessment methodologies to determine if students have mastered the essential knowledge and skills, and is designed to assess students in at least two elementary grade levels;

(3) a statewide assessment program developed by the committee for secondary students that is primarily performance-based, uses a variety of assessment methodologies to determine if students have mastered the essential knowledge and skills, and provides criteria for a certificate of initial mastery;

(4) recommendations for appropriate uses by public schools and school districts of the results of the statewide assessment programs;

(5) recommendations for changes to state laws and rules, school district policies, budget procedures, and other factors that inhibit schools from adopting strategies designed to ensure that students achieve the essential knowledge and skills;

(6) recommendations for accurate and fair indicators to measure the level of student learning in public schools and school districts and measures that would assist public schools and school districts in which student learning is below expected levels of performance;

(7) recommendations for modifying college and university entrance requirements that inhibit public schools from adopting strategies that are designed to ensure that students achieve the essential knowledge and skills;

(8) the time, support, and resources, including technical assistance, that the committee determines to be necessary for public schools and school districts to ensure that students achieve the essential knowledge and skills; and

(9) recommendations for replacing course or class credit requirements with requirements for core competencies, including critical thinking skills, for the purpose of improving and evaluating student performance.

(h) The committee shall establish technical advisory committees to assist the committee in the performance of its duties. To the extent possible, the technical advisory committees shall be composed of professionals in the field of education at the state and local levels.

(i) The committee shall seek advice from the public and all interested educational organizations.

SECTION 34. Section 21.551, Education Code, is amended by adding Subsection (j) to read as follows:

(j) This section expires on the date that the rules adopted under Section 21.5512 of this code take effect.

SECTION 35. Subsection (a), Section 21.5515, Education Code, is amended to read as follows:

(a) The State Board of Education by rule may provide alternate dates for the administration of the assessments ~~[of minimum basic skills under Section 21.551(a) of this code]~~ to a student whose parent or guardian is a migrant worker and who travels with the parent or guardian. The alternate dates may be chosen following a consideration of migrant work patterns, and the dates selected may afford maximum opportunity for the students to be present when the assessment instruments are administered.

SECTION 36. Subsection (f), Section 21.557, Education Code, is amended to read as follows:

(f) For the purposes of this section, "student at risk of dropping out of school" includes:

(1) each student in grade levels seven through 12 who is under 21 years of age and who:

(A) was not advanced from one grade level to the next two or more school years;

(B) has mathematics or reading skills that are two or more years below grade level;

(C) did not maintain an average equivalent to 70 on a scale of 100 in two or more courses during a semester, or is not maintaining such an average in two or more courses in the current semester, and is not expected to graduate within four years of the date the student begins ninth grade; or

(D) did not perform satisfactorily on an assessment instrument administered under this subchapter ~~[Section 21.551(a) of this code]~~ in the seventh, ninth, or twelfth grade;

(2) each student in prekindergarten through grade level six who:

(A) did not perform satisfactorily on a readiness test or assessment instrument administered at the beginning of the school year;

(B) did not perform satisfactorily on an assessment instrument administered under this subchapter [Section 21.551(a) of this code] in the third or fifth grade;

(C) is a student of limited English proficiency, as defined by Section 21.452 of this code;

(D) is sexually, physically, or psychologically abused;

(E) engages in conduct described by Section 51.03(a),

Family Code; or

(F) is otherwise identified as at risk under rules adopted by the State Board of Education; and

(3) each nonhandicapped student who resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, or foster family group home.

SECTION 37. Section 21.561, Education Code, as renumbered by S.B. 232, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 21.561. BIENNIAL REPORT. The State Board of Education shall biennially report to the legislature an evaluation of the correlation between student grades and student performance on assessment instruments administered under this subchapter [Section 21.551 of this code]. The report may be included with other reports made as required by law.

SECTION 38. Subchapter A, Chapter 34, Education Code, is amended to read as follows:

SUBCHAPTER A. TEXAS SUCCESSFUL SCHOOLS [~~EDUCATION EXCELLENCE~~] AWARD SYSTEM

Sec. 34.001. CREATION OF SYSTEM. The Texas Successful Schools [~~Education Excellence~~] Award System [~~(TEXAS)~~] is created [~~in the office of the governor~~] to recognize and reward those schools and school districts that demonstrate progress or success in achieving the educational goals of the state [gains in achievement of schools and school districts].

Sec. 34.002. TYPES OF AWARDS. (a) The governor may present a financial award to the schools or districts that the commissioner [educational excellence committee] determines have demonstrated the greatest improvement in achieving the educational goals [the most improved performances]. For each student in average daily attendance, each of those schools or districts is entitled to an amount set for the award for which the school or district is selected by the commissioner [committee], subject to any limitation set by the commissioner [committee] on the total amount that may be awarded to a school or district.

(b) The governor may present proclamations or certificates to additional schools and districts determined to [that the committee determines] have met or exceeded the educational goals [exemplary performances].

Sec. 34.003. ~~ADVISORY~~ [EDUCATIONAL EXCELLENCE] COMMITTEE. (a) The commissioner of education shall appoint an impartial committee to make recommendations for the criteria and the recipients of the Texas Successful School Awards [educational excellence committee is created to advise the State Board of Education on the criteria for and to select the recipients of scholastic gains awards and student intervention program awards. The committee is composed of 15 members appointed by the governor with the advice and consent of the senate. Members serve staggered six-year terms, with five members' terms expiring February 1 of each odd-numbered year].

(b) The committee must include parents, members of the general public, and persons from the fields of public education, higher education, and business.

(c) The committee shall consist of not fewer than five nor more than 10 members who shall serve terms of two years ~~[Each person appointed to the committee must be interested in public education. The committee shall include persons with knowledge and experience in drug and alcohol abuse prevention and dropout prevention. The representatives of public or higher education appointed to the committee must have knowledge and experience in one or more of the following areas:~~

- ~~[(1) curriculum and instruction;~~
- ~~[(2) statistical analysis;~~
- ~~[(3) school leadership; or~~
- ~~[(4) educational management and governance].~~

Sec. 34.004. [SCHOLASTIC GAINS] AWARDS. (a) The criteria which the commissioner shall use to select successful schools and districts shall be related to the goals in Section 2.01 of this code and the mastery of the essential skills and knowledge as measured by the performance-based assessment program. For purposes of selecting schools and districts under Section 34.002(a), each school's performance shall be compared to its previous performance.

(b) Not later than November 30 of each year, the commissioner [educational excellence committee] shall select schools and districts qualified to receive successful school [scholastic gains] awards for their [improvements in] performance during the preceding school year and report the [its] selections to the governor and the State Board of Education.

~~[(b) The State Board of Education with the advice and approval of the educational excellence committee shall establish the criteria and standards for the awards. The awards for school campuses shall be based primarily on the indicators established under Section 21.7531 of this code and the campus objectives established under Section 21.7532 of this code. The board shall incorporate criteria for the performance of students in special education programs. The criteria for schools and school districts must be measurable criteria and may include criteria related to:~~

- ~~[(1) student achievement;~~
- ~~[(2) operational efficiency;~~
- ~~[(3) central administrative support;~~
- ~~[(4) student and teacher attendance;~~
- ~~[(5) graduates who enter college, receive advanced training, or are employed;~~
- ~~[(6) principals participating in instructional leadership training; and~~
- ~~[(7) other matters selected by the committee that are related to scholastic gains.]~~

(c) The Central Education Agency shall notify each school district of the manner in which the district or a school in the district may qualify for a successful school [scholastic gains] award.

~~[Sec. 34.005. —STUDENT INTERVENTION PROGRAM AWARDS. (a) Not later than April 30 of each year, the educational excellence committee shall select schools or districts qualified to receive awards for providing exemplary student intervention programs during the preceding two school years and report its selections to the governor and the State Board of Education:~~

~~[(b) The programs must be designed to serve students at risk of dropping out of school and may include programs for dropout prevention and recovery, drug and alcohol prevention, parental and community involvement, or other programs that assist those students.~~

~~[(c) The State Board of Education with the advice of the educational excellence committee shall establish criteria and standards for the awards that are related to:~~

- ~~[(1) the planning, cost, and transferability of a program;~~

[(2) the relevance of a program to social problems in the school;
 [(3) parental and community participation;
 [(4) the effect of the program on dropout, promotion, and attendance
 rates; and

[(5) other matters selected by the committee that are related to a program's effectiveness in assisting students at risk of dropping out of school.

[(d) The Central Education Agency shall notify each school district of the manner in which the district or a school in the district may qualify for a student intervention program award.]

Sec. 34.005 [34.006]. USE OF AWARDS. (a) In determining the use of a monetary award received under this subchapter, a school or district shall give a priority to academic enhancement purposes. The award may not be used for [salary supplements or] any purpose related to athletics.

(b) The school committee established under Section 21.9301 of this code shall [principal of each school that receives a financial award under this subchapter shall appoint a committee to] determine the use of the funds awarded to a school under this subchapter. The professional staff, as defined in Section 21.930 of this code, shall [superintendent of each school district that receives a financial award under this subchapter shall appoint a committee to] determine the use of the funds awarded to the school district under this subchapter. [The board of trustees of the district may determine the composition of the committees, which may include teachers, administrators, other school employees, and parents, but the majority of the committee members must be teachers at the school or in the district, as applicable.]

Sec. 34.006 [34.007]. FUNDING. The award system may be funded by donations, grants, or legislative appropriations. The commissioner of education [office of the governor] may solicit and receive grants and donations for the purpose of making awards under this subchapter. The donations, grants, or legislative appropriations shall be accounted for and distributed by the Central Education Agency. The awards are subject to audit requirements established by the State Board of Education.

[Sec. 34.008. ADMINISTRATIVE AND RESEARCH ASSISTANCE. The Central Education Agency shall provide the committee appointed by the governor under this subchapter with staff support and research and technical assistance, including access to information regarding performance that is maintained by the agency.]

Sec. 34.007 [34.009]. CONFIDENTIALITY. All information and reports received by the commissioner of education [educational excellence committee] under this subchapter from school districts subject to confidentiality under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), are confidential and may not be disclosed in any public or private proceeding.

SECTION 39. Section 14.021, Education Code, is amended by amending Subsections (a) and (d) and adding Subsection (f) to read as follows:

(a) The State Board of Education shall develop a long-range plan for:

(1) using technology-based systems for instructional purposes in the classroom;

(2) evaluating, developing, and acquiring computer software for use in the classroom; [and]

(3) fostering computer literacy among public school students so that by the year 2000, all Texas high school graduates will have computer-related competencies that meet standards adopted by the State Board of Education; and

(4) identifying and distributing information on emerging technology for use in the public schools.

(d) The Central Education Agency shall take actions necessary to implement the long-range plan for technology. The commissioner shall report to the governor annually on the implementation process.

(f) Each school district may create a technology council of persons from the public and private sectors to assist schools in the application and adaptation of technology.

SECTION 40. Section 14.041, Education Code, is amended to read as follows:

Sec. 14.041. PURPOSE. In designing an education system to prepare students for the 21st century, it is the policy of the State of Texas that a quality education system should be available to all students under a thorough and efficient system of education. Under this system, every student must have access to a comprehensive curriculum designed to provide the basis for quality education. Teachers and administrators must be provided technical resources and training to guide the instruction of their students. The conduct and management of the system must be performed in an efficient and economical manner. Educational resources must be devoted to the maximum extent possible to the instruction of students. To accomplish these purposes, public education must utilize in a comprehensive manner appropriate technology in all aspects of instruction, administration, and communication.

SECTION 41. Section 14.042, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The State Board of Education shall establish and maintain an electronic information transfer system that is capable of transmitting information, according to criteria established by the board, among school districts, regional education service centers, the Central Education Agency, and other state and education entities the board considers appropriate for participation in the system. The board shall provide the appropriate standards for software and direct the agency to provide training for professional staff in order to reduce paperwork and better manage systems of reporting.

(c) The Central Education Agency shall identify model schools and disseminate information on the model schools' technological program development to school districts in all geographic areas of the state.

SECTION 42. Section 14.061, Education Code, is reenacted and amended to read as follows:

Sec. 14.061. PURPOSE. The purpose of this subchapter is to ~~[establish a technology fund to]~~:

(1) provide substantially equal access for students throughout the state to instruction of high quality, to all required courses of study, and to information resources providing enrichment through the application of computers and other emerging technology;

(2) provide substantially equal access for teachers and administrators throughout the state to teaching tools of high quality, to efficient management systems, and to instruction in using technology in the classroom enabling teachers to accomplish their daily tasks more quickly and efficiently, particularly in areas such as parent communication, curriculum planning, and interschool networking; and

(3) ~~improve [measure]~~ student productivity throughout the state.

SECTION 43. Subsection (a), Section 14.064, Education Code, is amended to read as follows:

(a) A district's allotment under Section 14.063 of this code may be used only for:

(1) the acquisition of technological equipment and related services, including hardware, software, courseware, training, subscription fees for

telecommunications and data base services, and other related services for the purposes of this subchapter; ~~and]~~

~~(2) the procurement of an electronic on-line catalog, circulation system, CD-ROM, or other emerging technology for each school library;~~

~~(3) the provision for electronic access to regional, statewide, national, and international resources;~~

~~(4) the acquisition of telecommunications equipment in classrooms for data base applications; and~~

~~(5) the research and development of emerging instructional technology.~~

SECTION 44. Subsection (a), Section 14.043, Education Code, as amended by S.B. 351, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) ~~The Central Education Agency [State Board of Education], in coordination with institutions of higher education and other public agencies, shall maintain and expand as needed the telecommunications capabilities of school districts and[.] regional education service centers. The agency shall design and implement an educational telecommunication system for distance education throughout the state. The agency shall[, and the Central Education Agency to] provide comprehensive delivery of:~~

~~(1) curricula and staff development;~~

~~(2) technical assistance;~~

~~(3) instructional software; and~~

~~(4) other text, graphics, or audio, video, or digitized communications equipment and services.~~

SECTION 45. Subchapter Z, Chapter 13, Education Code, is amended by adding Section 13.913 to read as follows:

Sec. 13.913. GROUP HEALTH BENEFITS FOR SCHOOL EMPLOYEES.

(a) Each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code). The coverage must meet the substantive coverage requirements of Article 3.51-6, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state and must be comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). The cost of the coverage may be shared by the employees and the district. Each district shall certify the district's compliance with this subsection to the executive director of the Employees Retirement System of Texas in the manner required by the board of trustees of the Employees Retirement System of Texas.

(b) A school district may not contract with an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization to issue a policy or contract under this section, or with any person to assist the school district in obtaining or managing the policy or contract unless, before the contract is entered into, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person.

(c) An insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization that issues a policy or contract under this section and any person that assists the school district in obtaining or managing the policy or contract for compensation shall provide an annual audited financial statement to the school

district showing the financial condition of the insurer, company, organization, or person.

(d) An audited financial statement provided under this section must be made in accordance with rules adopted by the State Board of Insurance or state auditor, as applicable.

SECTION 46. Section 3(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subdivisions (5), (6), (12), (14), and (15) and by adding Subdivisions (19), (20), (21), and (22) to read as follows:

(5)(A) "State employee [Employee]" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Subtitle B, D, or [E], Title 8, Government Code [or H], or Chapter 803, Government Code [13, of Title 110B, Revised Statutes], who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Subtitle C, Title 8, Government Code [D, Title 110B, Revised Statutes], whose last employment with the state prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System, or who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code [36, Title 110B, Revised Statutes], if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Coordinating Board, Texas College and University System, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(6) "Employer" shall mean the State of Texas, [and] all its departments, and any participating school district.

(12) "Active employee plan" shall mean a plan or program of group coverages as determined by the trustee as defined in Paragraph (11) above for the benefit of employees [of the State of Texas] as defined in this Act who are not retired.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time state employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time state employee shall receive the benefits of a full state contribution for coverage under this Act.

(19) "Participating school district" means a school district that has elected to participate in the Texas employees uniform group insurance program under Section 3A of this Act.

(20) "School district employee" means a participating member of the Teacher Retirement System who is employed by a participating school district and who is not covered by a group insurance program authorized by Chapter 32, Acts of the 65th Legislature, Regular Session, 1977 (Article 3.50-3, Vernon's Texas Insurance Code), but does not include a person performing personal services for a school district as an independent contractor.

(21) "School district" means a public school district.

(22) "Employee" means a state employee or a school district employee.

SECTION 47. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 3A to read as follows:

Sec. 3A. PARTICIPATION OF SCHOOL DISTRICT. (a) A school district may elect to participate in the plans, programs, and coverages offered to active state employees under this Act. A district that elects to participate must accept the schedule of costs adopted by the trustee.

(b) If the trustee determines that participation of school district employees in the plans of group coverages offered under this Act to state employees would have a significant adverse impact on the plans, programs, or coverages offered to state employees, the trustee may establish separate plans of group coverages for school district employees. If separate plans of group coverages for school district employees are established, school district employees may not participate in the plans of group coverages offered under this Act to state employees. In establishing and administering the separate plans for school district employees, the trustee, the executive director of the Employees Retirement System of Texas, and the State Board of Insurance have all the powers and duties assigned to them under this Act in relation to plans, programs, and coverages offered to state employees.

(c) The trustee may assess a participating school district a fee to cover administrative costs if state funds are not appropriated for this purpose.

SECTION 48. Section 4, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. ADMINISTRATION. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists or an administering firm who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee.

Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

(a) preparation of specifications for coverages provided by authority of this Act;

(b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;

(c) determination of the methods and procedures of claims administration;

(d) determination of the amount of employee payroll deductions and reductions and the responsibility of establishing procedures by which such deductions and reductions shall be made;

(e) establishment of procedures by which the trustee shall decide contested cases arising from programs or coverages provided under authority of this Act;

(f) continuing study of the operation of all coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under all benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group coverages and benefits applicable to all [state] employees. The trustee also may provide for optional group coverages and benefits in addition to the basic plan;

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate; and

(k) design, development, adoption, implementation, and administration of a cafeteria plan.

SECTION 49. Section 4B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) The executive director may delegate the duties of the executive director under this section to another person who is employed by the Employees Retirement System of Texas.

SECTION 50. Section 5(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(e) The trustee is authorized to select and contract for services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in

the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Section 14(a) or (b) of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants.

SECTION 51. Section 7, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 7. ANNUAL REPORT. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the coverages provided and the benefits and services being received by all [state] employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the features of the coverages provided for [all-state] employees and cooperate fully with the trustee in carrying out the purposes of the Act.

SECTION 52. Section 13B(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may study the feasibility of establishing a cafeteria plan and may design, develop, adopt, implement, and administer a cafeteria plan if the trustee determines that the establishment of a cafeteria plan is feasible, would be beneficial to the state and to the state employees who would be eligible to participate in the cafeteria plan, and would not adversely affect the insurance program established under this Act. The trustee may include in the cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

SECTION 53. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 13C to read as follows:

Sec. 13C. CAFETERIA PLAN FOR SCHOOL DISTRICT EMPLOYEES.

(a) If a school district elects to participate in the program after a cafeteria plan is established under Section 13B of this Act, the trustee may include school district employees in the cafeteria plan if it is feasible and would be beneficial to the participating district and the district employees.

(b) If the trustee determines that participating in the cafeteria plan adopted under Section 13B of this Act is no longer advantageous to the participating districts or their employees, the trustee may adopt an order terminating participation in the plan and providing a procedure for the orderly withdrawal of the districts and the district employees from the plan.

SECTION 54. Section 14, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 14. PAYMENT OF CONTRIBUTIONS. (a) The State of Texas shall contribute monthly to the cost of each state employee's group coverages such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for such employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. If the cost of the basic plan exceeds the amount of the state's contribution, the state shall deduct from or reduce the monthly compensation of the employee or shall deduct from the monthly retirement benefits of the annuitant an amount sufficient to pay the amount of the premiums not covered by the state's contribution.

(b) Each participating school district shall contribute, for each school district employee covered by the program, an amount equal to the employee only cost of

the plans of group coverages authorized by the trustee for school district employees, provided that the school district's contribution may not exceed the amount contributed for each state employee in accordance with Subsection (a) of this section. If the cost of the plan authorized by the trustee for school district employees exceeds the amount of the district's contribution, the district shall deduct from the monthly compensation of the employee an amount sufficient to pay the amount of the premiums not covered by the district's contribution.

(c) If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas, [or] the employee's department, or the participating school district make any contribution to the cost of any other coverages, services, or benefits on such employee or annuitant.

(d) [(c)] Except as provided by Subsection (e) [(d)] of this section, if any employee or annuitant applies for coverages for which the cost exceeds the state's, [or] the employing department's, or the participating school district's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of coverages under the said group programs and the amount contributed therefor by the State of Texas or the employing department.

(e) [(d)] If an employee elects to participate in the cafeteria plan, he shall execute a salary reduction agreement under which his monthly compensation will be reduced in an amount that is equal to the difference between the amount contributed for the coverages by the State of Texas, [or] the employing department, or the participating school district and the cost of the coverages for which the employee is eligible to pay under the cafeteria plan. An employee who executes a salary reduction agreement for insurance coverages included in the cafeteria plan is considered to have elected to participate in the cafeteria plan and agreed to a salary reduction for the insurance coverages for subsequent plan years unless the participant, during an annual enrollment period specified by the trustee, explicitly elects not to participate for the next plan year in the insurance coverages. After electing not to participate in insurance coverages included in the cafeteria plan, an employee must, to reestablish participation for subsequent plan years in insurance coverages included in the cafeteria plan, execute a new salary reduction agreement. A salary reduction agreement for other benefits of the cafeteria plan must be executed annually, during the annual enrollment period specified by the trustee, for each plan year. The employee shall pay any remaining portion of the cost of benefits that is not covered by the state's, [or] department's, or district's contributions and the salary reductions under the cafeteria plan by executing a payroll deduction agreement.

SECTION 55. Section 15, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to contributions for coverages for employees of participating school districts.

SECTION 56. Section 16, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. Except as provided by Subsection (d) of this section, the [The] contributions of employees, annuitants, participating school districts, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Except as provided by Subsection (d) of this section, portions [Portions] of the contributions made by employees, annuitants, participating school districts, and the state shall be regularly set aside in the fund as follows: a percentage determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves to be used by the trustee only for charges, claims, costs, and expenses under the program.

(d) If the trustee establishes separate plans for school district employees under Section 3A of this Act, the treasurer shall establish the school district employees life, accident, and health insurance and benefits fund. Contributions of participating school districts and school district employees shall be paid into the fund. The fund shall be administered and utilized in the same manner as the employees life, accident, and health insurance and benefits fund.

SECTION 57. Section 17(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(c) Each state department and each participating school district shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

SECTION 58. Section 18(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies and from the employees of participating school districts in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency, [or] department, or district.

SECTION 59. Subsection (b), Section 12.04, Education Code, is amended to read as follows:

(b) The board shall appoint a textbook proclamation advisory committee for each of the subject areas of reading, language arts, mathematics, science, and social studies [subject area for which textbooks are to be adopted]. The board may determine the number of persons to serve on each committee.

SECTION 60. Section 21.502, Education Code, is amended to read as follows:

Sec. 21.502. DEFINITIONS. As used in this subchapter, "special[":

[(t)] "Special" services" means:

(1) [(A)] "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings:

(A) [(ti)] resource room;

(B) [(tiii)] self-contained classroom, regular or special

campus;

- (C) [(iii)] hospital or community class;
- (D) [(iv)] homebound or bedside;
- (E) [(v)] speech or hearing therapy class; or

(2) [(B)] “related services,” which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the proper development and implementation of a handicapped student’s individualized educational plan, including but not limited to special transportation, school health services, counseling with students or families, psychological services, audiological services, visual training, medical or psychiatric diagnostic services, occupational therapy, physical therapy, recreational therapy, social work services, parent counseling and training, adaptive equipment, special seating, orientation and mobility training, speech therapy, music therapy, and corrective therapy.

[(2) “Resident district” means the local school district in which the parent or other person who has the primary legal obligation for care, control, and custody of a handicapped student resides, except that if the state is managing conservator of the student, the resident district is the district within which the student is placed by the state.]

SECTION 61. Subsections (c) and (d), Section 21.506, Education Code, are amended to read as follows:

(c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, no costs shall be paid from education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the local school district, the portion of the costs that includes appropriate education services as determined by the school district’s admission, review and dismissal committee shall be paid from state and federal education funds [If the state is managing conservator of a student placed in a private residential facility, the total cost of the residential placement shall be paid from state and federal funds. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the total of that portion of the contract which involves the costs of instructional and related services shall be paid from state and federal funds. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program. The State Board of Education shall adopt rules governing the use of federal funds as supplemental or partial payment of the local or state share under this section].

(d) [The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student.] If the district contracts for the provision of education services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student’s individualized education program as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this subchapter. The State Board of Education shall adopt rules designed to effectuate this subsection.

SECTION 62. Section 21.911, Education Code, is amended to read as follows:

Sec. 21.911. TESTING PUPILS FOR ASSIGNMENT TO SPECIAL EDUCATION CLASSES. [(a)] Before a pupil is assigned to a special education class, a comprehensive evaluation of the student’s educational needs shall be

conducted using assessment procedures that are appropriate for the student's most proficient mode of communication [he shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the pupil is most fluent and has the best speaking ability and capacity to understand. The tests shall be selected from a list approved by the State Board of Education:

[(b) No school district may assign a pupil to a special education class on the basis of intelligence tests administered in a language other than the primary home language of the child:

[(c) The administration of an intelligence test under this section is not required for the assignment of a student to a special education class because of pregnancy].

SECTION 63. Subsection (a), Section 21.113, Education Code, is amended to read as follows:

(a) The State Board of Education shall prepare and biennially [annually] update a master plan for vocational education in Texas which sets forth objectives for vocational education for the next biennium [school year] and long-term goals for the following five years.

SECTION 64. Subsection (b), Section 11.351, Education Code, is amended to read as follows:

(b) A school district shall participate in the program if requested to do so by the Central Education Agency. The agency [~~The Central Education Agency~~] shall request the participation of each district that has a [at least those districts with] dropout rate [rates] in the top 25 percent of all districts and has at least 20 dropouts annually [to participate in the program]. The commissioner, on request of a district, may waive the requirement for a district's participation for one year if the district would be unable to effectively participate in the program. Other school districts may participate in the pilot program on the approval of the Central Education Agency. Each district in the program shall offer preparatory classes for the high school equivalency examination to students who are eligible for the program. The classes shall not be isolated from other academic and vocational programs of the school district. The district shall inform those students of the locations and times at which the students may take a high school equivalency examination.

SECTION 65. Subsection (a), Section 32.71, Education Code, is amended to read as follows:

(a) Certificate and registration fees, except those charged pursuant to Subsection (d) of this section, shall be collected by the Administrator and deposited with the State Treasurer. Each fee shall be in an amount set by the Administrator and approved by the State Board of Education in an amount not to exceed 150 percent of each fee in the following schedule:

(1) the initial fee for a school is \$2,000 [~~\$1,700~~];

(2) the first annual renewal fee and each subsequent renewal fee for a school is determined by applying a percentage, not to exceed 0.3 percent, to the gross tuition and fees, excluding refunds as provided by Section 32.39 of this code, of the school [~~\$1,400, and each subsequent annual renewal fee is based on the gross amount of annual student tuition and fees as follows:~~

Gross Amount, Student Tuition and Fees Fee

not more than \$ 50,000 \$ 550

more than \$ 50,000 but not more than 100,000 650

more than 100,000 but not more than 250,000 750

more than 250,000 but not more than 500,000 850

more than 500,000 but not more than 750,000 950

more than 750,000 but not more than 1,000,000 1,050

more than 1,000,000 1,150];

(3) the initial registration fee for a representative is \$60;

- (4) the annual renewal fee for a representative is \$30;
- (5) the fee for a change of a name of a school or owner is \$100;
- (6) the fee for a change of an address of a school is \$180;
- (7) the fee for a change in the name or address of a representative or a change in the name or address of a school that causes the reissuance of a representative permit is \$10;
- (8) the application fee for an additional course is \$150, except for seminar and workshop courses, for which the fee is \$25;
- (9) the application fee for a director, administrative staff member, or instructor is \$15;
- (10) the application fee for the authority to grant degrees is \$2,000;
- (11) the application fee for an additional degree course is \$250; and
- (12) the fee for an inspection required by rule of the State Board of Education of classroom facilities that are separate from the main campus is \$250.

SECTION 66. Section 21.557, Education Code, is amended by adding Subsection (i) to read as follows:

(i) Each school district shall maintain on file and expeditiously make available on the request of a member of the general public a copy of the report describing the district's overall compensatory education program for educationally disadvantaged students. The report must include sufficient detail to describe the overall compensatory education program offered on each campus and the activities and services provided on each campus from each funding source. The commissioner of education shall develop model report formats that districts may use for the report. The model formats must be designed to be easily understood by a member of the general public and may not be overly burdensome for districts to prepare. The commissioner shall submit the model formats to the Legislative Education Board for comment and may not distribute the formats until the commissioner has received and considered those comments. Each school district shall prepare and periodically update the description of the district's compensatory education program to accurately reflect the programs and services currently provided to educationally disadvantaged students.

SECTION 67. Section 16.152, Education Code, is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, which shall not exceed 15 percent, must be used in providing remedial and compensatory education programs under Section 21.557 of this code, and the district must account for the expenditure of state funds by program and by campus. Funds allocated under this section, other than the indirect cost allotment, shall only be expended to improve and enhance [for supplemental purposes in addition to those] programs and services funded under the regular education program [of the district from all funding sources].

(i) The commissioner of education shall withhold funds allocated under this section to a district that fails to timely prepare or make available on request of a member of the general public the report required under Section 21.557(i) of this code. The commissioner may restore withheld funds only when the commissioner is satisfied that the district has provided the information requested.

SECTION 68. Sections 13.904(a), (c), and (f), Education Code, are amended to read as follows:

(a) A state minimum sick leave program consisting of five days per year sick leave with no limit on accumulation and transferable among districts shall be provided for every person [teacher] regularly employed in the public free schools of Texas. Local school districts may provide additional sick leave beyond this minimum. Each employee may use one sick day per semester as a personal business day.

(c) Each district's local board of education shall establish a sick leave plan, and shall administer the program to assure compliance with the intent of the law that leave, other than leave approved as a personal business day, shall be approved only on the basis of:

(1) an illness of the employee [teacher];
(2) an illness of a member of the employee's [teacher's] immediate family;

(3) a family emergency; or

(4) a death in the employee's [teacher's] immediate family.

(f) In addition to all other days of leave provided by this section or by the school district, ~~an [a teacher or another professional]~~ employee of a school district who is physically assaulted during the performance of his regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault. Days of leave taken under this subsection ~~[shall be reported and reimbursed as sick leave in accordance with Subsection (b) of this section, but]~~ may not be deducted from accrued sick leave. The period provided in this subsection shall not extend more than two years beyond the date of the assault.

SECTION 69. Sections 13.904(b), 13.904(d), and 21.919, Education Code, are repealed.

SECTION 70. The cost to conduct research for and provide staff support for the committee on student learning shall be provided from funds appropriated under Section 11.271, Education Code, for the public education development fund.

SECTION 71. Section 21.063, Education Code, is amended to read as follows:

Sec. 21.063. TUITION FEE FOR TRANSFER STUDENTS. The receiving district may charge a tuition fee to the extent that the district's actual expenditure per student in average daily attendance, determinable by its board of trustees, exceeds the sum the district benefits from state aid sources as provided in Section 21.062 of this code and county education funds distributed under Subchapter J, Chapter 16, of this code. However, unless a tuition fee is prescribed and set out in transfer agreement prior to its execution by the parties, no increase in tuition charge shall be made for the year of that transfer that exceeds the tuition charge, if any, of the preceding school year.

SECTION 72. Section 18.25, Education Code, is amended to read as follows:

Sec. 18.25. MEETING TO DETERMINE TAX REQUIRED. (a) If the vote be in favor of such tax, the County School Trustees of such county shall as soon thereafter as practicable hold a meeting for the purpose of determining the amount of money required for equalization purposes, and for the payment of administration expense in such counties, and they shall thereupon make their order setting forth the estimated amount of money required for such purposes, and the rate of tax to be levied to raise such sums, and shall certify the same to the Commissioners' Court; and the Commissioners' Court shall levy the rate so certified to them by the said County School Trustees, not to exceed the rate fixed by this chapter, and cause such tax to be assessed and collected.

(b) In a county with a population of more than 1.5 million that has a Board of County School Trustees, the Board shall levy the rate determined under Subsection (a) of this section. The Board shall certify the rate levied by the Board to the county tax assessor and collector, who shall assess and collect the tax.

SECTION 73. Section 830.005, Government Code, is amended to read as follows:

Sec. 830.005. EXEMPTION FROM TAXES. If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a

benefit program authorized and at least partly paid for by the governing board of an institution of higher education or the Central Education Agency.

SECTION 74. Section 830.101(a), Government Code, is amended to read as follows:

(a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board. The State Board of Education shall provide an opportunity to participate in the optional retirement program to the commissioner of education.

SECTION 75. Section 830.103, Government Code, is amended to read as follows:

Sec. 830.103. EFFECT OF TRANSFERS AND CHANGES IN EMPLOYMENT STATUS. (a) An institution of higher education shall accept the transfer of a participant's optional retirement program from another institution of higher education or from the Central Education Agency. The Central Education Agency shall accept the transfer of a participant's optional retirement program from an institution of higher education if the participant becomes commissioner of education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than as commissioner of education or a position in an institution of higher education.

SECTION 76. Sections 830.202(b), (c), and (d), Government Code, are amended to read as follows:

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education and, if applicable, to the Central Education Agency.

(c) The disbursing officer of an institution of higher education and, if applicable, of the Central Education Agency shall pay the contributions collected under this section to the company providing the optional retirement program for that institution.

(d) An institution of higher education and, if applicable, the Central Education Agency shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.

SECTION 77. Section 830.204(a), Government Code, is amended to read as follows:

(a) A participant in the optional retirement program and either the employing institution of higher education or, as applicable, the Central Education Agency, acting through its governing board, shall execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section 830.201 and under which the employer or agency contributes an amount equal to the reduction for any type of investment authorized in Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403) or toward the purchase of an annuity under the program.

SECTION 78. Section 830.205, Government Code, is amended to read as follows:

Sec. 830.205. BENEFITS. Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating under this chapter [in one or more institutions of higher education].

SECTION 79. Notwithstanding the authority granted by this Act, the 72nd Legislature, during its regular session, may not appropriate any general revenue for costs related to the implementation of Sections 45 through 58 of this Act.

SECTION 80. Sections 45 through 58 of this Act take effect September 1, 1992. Sections 73 through 78 of this Act take effect July 1, 1991, or August 26, 1991, whichever date is the earlier date that those sections may take effect under Article III, Section 39, of the Texas Constitution.

SECTION 81. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2885 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2885 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Harris of Tarrant.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Harris of Tarrant, Leedom.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 152, Informing the Department of Energy of our serious interest in the expansion of Pantex through a reconfiguration of the nuclear weapons system.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 432**: A. Smith, Chair; Gibson, Edwards, Craddick, Carona.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 772**: Stiles, Chair; Hury, Oliveira, Seidlits, Evans.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 958**: S. Thompson, Chair; Rangel, Wentworth, Goodman, Hartnett.

The House has concurred in Senate amendments to **H.B. 1373** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1773** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2004** by a non-record vote.

The House has refused to concur in Senate amendments to **H.B. 2054** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Park, Chair; Harris, Madla, Hirschi, Smithee.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 359**: Gibson, Chair; Naishtat, Hartnett, Finnell, Robnett.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 383**: Pierce, Chair; Gibson, Tallas, Black, Swinford.

The House has concurred in Senate amendments to **H.B. 850** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 914** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1621** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1719** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1756** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1771** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2009** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2662** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2822** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2884** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 827 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 827, Relating to the regulation of water and sewer utilities.

The bill was read second time.

Senator Harris of Tarrant offered the following amendment to the bill:

Amend **H.B. 827** by striking Section 3 and renumbering subsequent sections accordingly.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Armbrister and Green asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2 ON THIRD READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 2, Relating to the regulation of the insurance industry, the punishment for certain criminal offenses relating to the business of insurance, maintaining motor vehicle financial responsibility, and creating certain offenses.

The bill was read third time.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2** by deleting the section which adds Article 21.02-2, Insurance Code, as it was added by Floor Amendment No. 35 on second reading.

The amendment was read and was adopted by the following vote: Yeas 22, Nays 8, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Turner.

Nays: Brooks, Green, Johnson, Lucio, Tejeda, Truan, Whitmire, Zaffirini.

Present-not voting: Glasgow.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2** as follows:

On page 179, line 10, after the "." insert the following:

A claim under this section does not include a claim resulting from a loss caused by natural causes.

On page 179, delete subsection (b) and (c), lines 11 through 17 and insert the following:

(b) An insurer may assess a premium surcharge at the time a policy is renewed if the insured has filed two or more claims in the preceding policy year. The insurer may assess an additional premium surcharge if an additional claim is made in the

following policy year. The board shall set the amount of any surcharge that may be assessed under this subsection, except that the amount of the surcharge may not exceed 10 percent of the total premium, including any premium surcharge, actually paid by the insured in the preceding policy year.

(c) An insurer may decline to renew a policy if the insured has filed three or more claims under the policy in any three-year period.

(d) An insurer shall notify an insured who has filed two claims in a period of less than three years that the insurer may decline to renew the policy if the insured files a third claim during the three-year period. The notice must be in a form approved by the board.

(e) An insurer that renews the policy of an insured who has filed three or more claims under the policy in a three-year period may assess a premium surcharge in an amount set by the board.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 2 by deleting the following language:

SECTION 11.22. Amend Article 1.14-2, Insurance Code, by adding a new Section 17B to read as follows:

Sec. 17B. WRONGFULLY OBTAINING UNAUTHORIZED INSURANCE; ADMINISTRATIVE PENALTY. (a) A person commits an administrative violation if the person knowingly or intentionally obtains or maintains insurance coverage from an insurer that:

(1) is not authorized to do business in this state; and

(2) is not a surplus lines insurer for insurance that is eligible for surplus lines insurance as provided under this article.

(b) An administrative violation under this section is punishable by an administrative penalty not to exceed \$5,000.

(c) The commissioner may assess an administrative penalty against a person who commits an administrative violation under this section.

(d) The commissioner shall consider the following factors in assessing administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act;

(5) the administrative penalty necessary to deter future violations; and

(6) any other matters that justice may require.

(e) An administrative penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under this section.

(f) Any person may request the initiation of administrative violation proceedings by filing written allegations with the department.

(g) If investigation by the department indicates that an administrative violation has occurred, the department shall notify the person in writing of:

(1) the charge;

(2) the proposed administrative penalty;

(3) the right to consent to the charge and the administrative penalty;

and

(4) the right to request a hearing.

(h) Not later than the 20th day after the date on which notice is received, the charged person shall:

(1) remit the amount of the administrative penalty to the commissioner; or

(2) submit to the commissioner a written request for a hearing.

(i) On request of the charged person or at the discretion of the commissioner, the commissioner shall set a hearing. The hearing shall be conducted in the manner provided for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(j) At the close of the hearing, the commissioner shall make findings of fact and conclusions of law and shall issue a written decision. If the commissioner determines that an administrative violation has occurred, the decision shall set forth the amount of the administrative penalty assessed and shall order payment of the administrative penalty.

(k) The findings of fact, the decision, and the order shall be sent immediately to the charged person.

(l) If, without good cause, the charged person fails to respond as required under Subsection (h) of this section, the administrative penalty is due and the commissioner shall initiate enforcement proceedings.

(m) A decision in a hearing under Subsection (j) of this section is subject to judicial review in the manner provided for judicial review under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(n) If an administrative penalty is assessed, the charged person must either:

(1) forward the amount of the administrative penalty to the commissioner for deposit in an escrow account; or

(2) post with the commissioner a bond for the amount of the administrative penalty, to be effective until all judicial review of the violation determination is final.

(o) Failure to comply with Subsection (n) of this section results in a waiver of all legal rights to contest the violation or the amount of the administrative penalty.

(p) If the court determines that the administrative penalty should not have been assessed or should be reduced, the commissioner shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Haley offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 2 as follows:

Insert SECTION 11.45, on page 394, lines 22-25 and on page 395, line 1, as follows:

SECTION 11.45. Article 21.49, Insurance Code, is amended by adding Section 12A to read as follows:

Sec. 12A. LEGAL COUNSEL. The association is a state agency for purposes of employing or authorizing legal representation and shall be represented by the attorney general in the manner provided by general law for representation of any other state agency by the attorney general.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 5

Amend C.S.H.B. 2, beginning on page 109, line 4, by deleting Sections 2.45, 2.46, and 2.47.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 6

Amend C.S.H.B. 2 as follows:

Amend ARTICLE 2 to add a new section:

Article 5.98 Rulemaking, is amended to read as follows:

The State Board of Insurance may adopt reasonable rules that are appropriate to accomplish the purposes of this ~~[subchapter]~~ chapter.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 7

Amend C.S.H.B. 2 by adding a new Article ____ to read as follows and renumber the succeeding articles in consecutive numerical sequence.

SECTION 1. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (g), is amended to read as follows:

(g) "Health care" means prevention, maintenance, ~~[and]~~ rehabilitation, pharmaceutical, and chiropractic services provided by qualified persons other than medical care.

SECTION 2. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (i), is amended to read as follows:

(i) "Health care services" means any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic or dental care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

SECTION 3. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (n), is amended to read as follows:

(n) "Provider" means any practitioner other than a physician, such as a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

SECTION 4. Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code) is amended by adding Subsection (h) as follows:

(h) A health maintenance organization that provides coverage for health care services or medical care through one or more providers or physicians who are not partners or employees of the health maintenance organization or one or more

providers or physicians that are not owned or operated by the health maintenance organization shall provide a (20) twenty calendar day period each calendar year during which any provider or physician in the geographic service area may apply to participate in providing health care services or medical care under the terms and conditions established by the health maintenance organization for the provision of such services and the designation of such providers and physicians. A health maintenance organization will notify, in writing, such provider or physician of the reason for nonacceptance to participate in providing health care services or medical care. This section may not be construed to (1) require that a health maintenance organization utilize a particular type of provider or physician in its operation; (2) require that a health maintenance organization accept a provider or physician of a category or type that does not meet the practice standards and qualifications established by the health maintenance organizations; or (3) require that a health maintenance organization contract directly with such providers or physicians.

SECTION 5. This article takes effect January 1, 1992.

No requirement of this Act shall invalidate any provision of a contract between a physician or a provider and a health maintenance organization that is executed before the effective date of this Act.

Amend C.S.H.B. 2 on page 330 by adding a new Art. 21.58B at the end of SECTION 11.03 to read as follows:

Art. 21.58B. A member or employee of the Board of Chiropractic Examiners shall be prohibited from acting as a consultant or performing any consultant activities for any insurance company or business, individual or utilization review agent that audits chiropractic claims, charges or services. For the purposes of this section, the term "consultant" means a person who: (1) for compensation and at the request of an insurance company, business, individual or utilization review agent, reviews, assesses or evaluates any claim, charge, treatment or service of another chiropractor for the purposes of determining if said claims, charges, treatment or services are medically necessary, reasonable, appropriate or are recommended for payment or non-payment; or (2) for compensation and at the request of an insurance company, business, individual or utilization review agent, advises or recommends to any insurance company or utilization review agent, guidelines regarding chiropractic charges, treatment or services.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 8

Amend C.S.H.B. 2 as follows:

1. SECTION 2.01. Amend Article 5.101 by deleting "Except as provided by subsection (k) of this section," on page 41, line 12-13.

2. SECTION 2.06. Amend Article 5.05 by inserting "(a)" after the "." on line 3, page 49.

3. Add a new Section 2.17D to follow Section 2.17C

SECTION 2.17D. Sec. 4A, Article 5.15-1 of this code is amended to read as follows:

"Sec. 4A. Notwithstanding any other provision of the article, Section (g), Article 5.15, of this code applies to professional liability insurance for health care providers and physicians, and if there is a conflict between this article and Section (g), Article 5.15, of this code, Section (g) prevails."

4. SECTION 2.50. Amend Article 19.12. by adding "and of Article 21.21" on line 24, page 114.

5. SECTION 5.02. Amend Article 21.11-1 by adding "Cancellation of Agency Contracts by Fire and Casualty Insurance Companies" on page 182, line 10.

6. SECTION 7.07. Amend Article 1.10 by underlining "shall thereupon" on line line 12, page 208.

7. SECTION 11.03. Amend Article 21.57 by adding "Definitions" after "(a)" on line 12, page 307.

8. Renumber the second "SECTION 11.10" as "SECTION 11.11" page 345, line 11.

9. SECTION 11.42.

(a) Amend subsection (g), on page 388, line 15, delete "nine members appointed by the Board as follows:" and insert "nine members as follows"

(b) Amend subsection (h), on page 388, lines 10-18, strike subparagraph (i) and substitute the following: "(i) five representatives of different insurers who are members of the Association who shall be elected by members as provided in the plan of operation;"

10. SECTION 11.50. Amend Article 1.16 by relettering "(b)" as "(g)" on line 2, page 401.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 9

Amend C.S.H.B. 2 as follows:

1. On page 38, strike lines 1-4 and substitute the following:
"by Subchapters A through L of this chapter, except ocean marine insurance, inland marine insurance, fidelity, surety and guaranty bond insurance, errors and omissions insurance, directors' and officers' liability insurance, general liability insurance, commercial property insurance, workers' compensation insurance, professional liability insurance for physicians and health care providers as defined in Article 5.15-1 of this code, and attorney's professional liability insurance."

2. On page 101, line 2, between the period and "no", insert "(a)".

3. On page 101, between lines 5 and 6, insert the following:

"(b) This section does not apply to workers' compensation insurance. This subsection does not apply if H.B. 2898, Acts of the 72nd Legislature, Regular Session, 1991, becomes law."

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 10

Amend C.S.H.B. 2 by adding a new SECTION 2.17B as follows:

Amend SECTION 2.17B after "the retail buyer in connection therewith" by adding the following language: "and no charge is made and no premium is charged under any retail credit agreement when there is no monthly balance or when monthly balances are paid in full".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 11

Amend C.S.H.B. 2 by adding the following appropriately numbered sections to Article 11 to read as follows:

SECTION _____. Section 3B, Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3 Vernon's Texas Insurance Code) is amended to read as follows:

Sec. 3B. In addition to any other conduct or practice prohibited by law, a managing general agent may not knowingly cede, arrange, facilitate, or bind an insurer to reinsurance, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules. The managing general agent may not commit the insurer to participate in insurance or reinsurance syndicates [to a company that is unable to fulfill its obligations under the reinsurance contract].

SECTION _____. Section 3C, Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3, Vernon's Texas Insurance Code) is amended by adding a new subsection (f) to read as follows:

(f) A managing general agent shall submit to an examination of its financial condition, and its compliance with the laws of Texas affecting the conduct of its business by the commissioner, by one or more commissioned examiners, or by a certified public accountant or persons or firms qualified to perform such examinations, as the commissioner deems necessary. The expense of such examination shall be paid by the managing general agent examined in an amount the commissioner shall certify to be just and reasonable.

SECTION _____. REPEALER. Article 18.16-1, Insurance Code, is repealed.

SECTION _____. Article 1.11, Insurance Code, is amended by adding new Subsection (c) to read as follows:

(c) Included on or attached to page 1 of the annual statement shall be the statement of a qualified actuary, who is a member in good standing of the American Academy of Actuaries, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and other actuarial items for life, accident and health, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the NAIC annual statement instructions as appropriate for the type of risks insured.

SECTION _____. Sections 1 and 2, Article 1.32, Insurance Code, are amended to read as follows:

Article 1.32. HAZARDOUS FINANCIAL CONDITION

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended, title insurance companies, stipulated premium insurance companies, group hospital service companies, health maintenance organizations, risk retention groups, and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; [or]

(e) increase the insurer's capital and surplus by contribution; or

(f) suspend or cancel the certificate of authority. The commissioner may use the remedies available under this section in conjunction with the provisions of Article 1.10A of this code when the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to its policyholders or the general public.

SECTION ____ Section 2, Article 1.10A, Insurance Code, is amended to read as follows:

Sec. 2. **AUTHORITY TO ISSUE ORDER.** The commissioner may issue an emergency cease and desist order, ex parte, if:

(1) the commissioner believes:

(A) an authorized person engaging in the business of insurance is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of a rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code;

(B) an unauthorized person is engaging in the business of insurance in violation of Article 1.14-1 of this code or in violation of a rule or regulation promulgated under Article 1.14-1 of this code; [or]

(C) an unauthorized person engaged in the business of insurance acting in violation of Article 1.14-1 of this code is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of any rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code; or [and]

(D) an authorized person engaging in the business of insurance is determined by the commissioner to be in a hazardous condition or a hazardous financial condition under Article 1.32 or Article 20A.19 of this code; and

(2) it appears to the commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

SECTION ____ Subsection (a), Section 19, Texas Health Maintenance Organization Act (Article 20A.19, Vernon's Texas Insurance Code) is amended to read as follows:

Sec. 19. HAZARDOUS FINANCIAL CONDITION. (a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time;

[or]

(5) to increase the health maintenance organization's capital and surplus by contribution; or

(6) to suspend or revoke the certificate of authority.

SECTION _____. Section 1 of Article 22.18, Insurance Code is amended to read as follows:

Art. 22.18. OTHER LAWS TO GOVERN

Sec. 1. The following Articles of this Code, to wit: Article 1.14, Article 1.15, Article 1.15A, Article 1.16, Article 1.19, Article 1.24, Article 1.32, Article 3.10, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.62, Article 3.63, Article 3.67, Article 21.07-7, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

SECTION _____. REPEALER. Article 3.55-1, Insurance Code, is repealed.

SECTION _____. Article 3.28, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. OPINION OF RESERVES. (a) GENERAL. (1) In conjunction with the annual statement and in addition to other information required by this article, every life insurance company doing business in this state shall annually submit to the State Board of Insurance the opinion of an actuary or other financial specialist as defined by Board rule as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule of the Board are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The Board by rule shall define the specific requirements of this opinion, the qualifications of the persons who may certify to such an opinion, and shall include any matters deemed to be necessary to the opinion's scope.

(2) The opinion required under this section shall apply to all business in force including individual and group health insurance plans, in form and substance as specified by Board rule and acceptable to the commissioner.

(3) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion filed in the other state reasonably meets the requirements applicable to a company domiciled in this state.

(4) A. Except in cases of fraud or wilful misconduct or as provided by Subsection (a)(7)B of this section, a person who certifies to an opinion under this section shall not be liable for damages to a person other than the insurance company covered by the opinion prepared by the certifying person for any act, error, omission, decision, or conduct with respect to the person's opinion.

(B) Subsection (a)7A of this section does not apply to a monetary forfeiture imposed under Section 7, Article 1.10, Insurance Code.

(5) A company or a person who certifies to an opinion under this section and that fails to comply with or violates this section or rules adopted by the Board pursuant to this section is subject to disciplinary action under Section 7, Article 1.10, Insurance Code.

(6) A memorandum, in form and substance in compliance with rules of the State Board of Insurance, shall be prepared to support each opinion.

(7) If an insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the Board's rules or is otherwise unacceptable to the commissioner, the commissioner may engage an actuary or other financial specialist as defined by Board rule at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum.

(b) ACTUARIAL ANALYSIS OF RESERVES AND ASSETS SUPPORTING SUCH RESERVES. Every life insurance company, except as exempted by or pursuant to rule adopted by the Board, shall also annually include in the opinion required by Subsection (a)(1) of this section, an opinion of the same person who certifies to the opinion under Subsection (a) (1) of this section as to whether the reserves and related actuarial items held in support of the policies and contracts specified by Board rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The rules adopted by the Board under this section shall exempt those companies that would be exempted from the requirements stated in this subsection (b) according to the most recently adopted regulation by the National Association of Insurance Commissioners entitled "Model Actuarial Opinion and Memorandum Regulation" or its successor regulation.

SECTION _____. Article 3.28, Insurance Code is amended by adding Sections 8A and 9A to read as follows:

Sec. 8A. MINIMUM AGGREGATE RESERVES. In no event shall aggregate reserves of a company covered by Section 8 of this article for all policies, contracts, and benefits be less than the aggregate reserves determined to be necessary to render the opinion required by Section 2A of this article.

Sec. 9A. EFFECT OF OPINION ON STANDARD OF VALUATION. For the purposes of Section 9 of this article, the holding of additional reserves previously determined to be necessary to render the opinion required by Section 2A of this article shall not be deemed to be the adoption of a higher standard of valuation.

SECTION _____. The opinion submitted under Section 2A, Article 3.28, Insurance Code, shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1992.

SECTION _____. Article 1.15, Insurance Code, is amended by amending Section 1 and adding Sections 5 through 9 to read as follows:

Sec. 1. The State Board of Insurance shall once each year for the first three (3) years after organization or incorporation, and thereafter once in each three (3) years, or oftener, if the Board deems necessary, in person or by one or more examiners commissioned by such Board in writing, visit each carrier organized

under the laws of this state and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and such Board shall similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other states, each insurance carrier not organized under the laws of this state but authorized to transact business in this state. Such Board or its commissioned examiners shall have free access to all the books and papers of the carrier or agents thereof relating to the business and affairs of such carrier, and shall have power to summon and examine under oath, if necessary, the officers, agents, and employees of such carrier and any other person [within the state] relative to the affairs of such carrier. Such Board may revoke or modify any certificate of authority issued by such Board or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. Such Board shall give such company at least ten (10) days written notice of its intention to revoke or modify such certificate of authority stating specifically the reason for the action it proposes to take.

Sec. 5. If a carrier or an agent of a carrier fails or refuses to comply with this article or rules adopted under this article or to comply with a request of the Board or a commissioned examiner to be examined or to provide information requested as part of an examination by the Board or commissioned examiner, the carrier is subject to disciplinary action under Article 1.10., Section 7, of this code, and the Commissioner of Insurance may institute disciplinary action pursuant to Article 1.10, Section 7, Insurance Code.

Sec. 6. The Board, by rule, shall adopt procedures for filing and adoption of examination reports and for hearings to be held under this article and guidelines governing orders issued under this article.

Sec. 7. Nothing contained in this article shall be construed to limit the Commissioner's authority to use any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner of Insurance may, in his or her sole discretion deem appropriate.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 12

Amend C.S.H.B. 2, page 367, line 20 and page 369, line 1, by striking the words "and admitted" in both places.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 13

Amend C.S.H.B. 2 on page 115, line 17, strike "different" and substitute "less".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 14

Amend C.S.H.B. 2 in Section 11.23 of the bill, by amending Subsection (b) of Article 1.35D, Insurance Code, as added by the bill, to read as follows:

(b) The department, through the toll-free telephone number, shall provide the following to the public:

(1) information collected or maintained by the department relating to the number of complaints received against a particular insurer and the disposition of the complaints;

(2) the rating of the insurer, if any, as published by a nationally recognized rating organization;

(3) the types of coverages available to a consumer through any insurer writing insurance in this state; and

(4) other appropriate information collected and maintained by the department.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 15

Amend C.S.H.B. 2 as follows:

Delete the following language:

SECTION 6. Section 3C, Article 3.51-6, Insurance Code, as added by Section 14, Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Section 3E and is amended to read as follows:

Sec. 3E [3C]. COVERAGE OF CERTAIN ILLNESSES. (a) No group policy of accident, health, or accident and health insurance including group contracts issued by any hospital and medical service plan corporation subject to Chapter 20 of this code and health maintenance organization subject to Chapter 20A of this code shall be delivered or issued for delivery or renewed that:

(1) excludes or denies coverage for HIV, AIDS, or HIV-related illnesses; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

(b) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

(1) schizophrenia;

(2) paranoid and other psychotic disorders;

(3) bipolar disorders (mixed, manic and depressive);

(4) major depressive disorders (single episode or recurrent); and

(5) schizo-affective disorders (bipolar or depressive).

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

HOUSE BILL 827 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 827 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Armbrister.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Armbrister asked to be recorded as voting "Nay" on the final passage of the bill.

(Senator Bivins in Chair)

SENATE BILL 1596 WITH HOUSE AMENDMENTS

Senator Turner called S.B. 1596 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Russell

Amend S.B. 1596, page 19, line 17, Subsection (12), after the word "justice" by striking the remainder of the sentence and substituting "data report."

Committee Amendment - Russell

Amend S.B. 1596, on pages 25 through 28, by deleting all of SECTION 10, SECTION 11, and SECTION 12, and renumbering the subsequent sections accordingly.

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in the first sentence of Section 499.091, by striking "has a" and substituting "shall continue to perform its".

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in Section 499.091, by striking "60th" and substituting "45th".

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in Section 499.093, by adding new Subsections (c) and (d) to read as follows:

(c) Not later than September 10, 1993, the Commission on Jail Standards shall determine for each county jail in this state the number of inmates confined in the jail on September 1, 1993, who were awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision, and for whom paperwork and processing required for transfer had been completed on that date.

(d) A county is entitled to payment from the Commission on Jail Standards as compensation to the county for confining the number of inmates determined as ready for transfer under Subsection (c) at an amount per inmate to be determined

by dividing the total number of inmates in county jails under Subsection (c) into \$11.5 million.

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in Section 499.094, by striking “1993” and substituting “1995”.

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in Section 499.094, by striking everything after “confinement” and substituting “the sum of \$20.”.

Amendment - Stiles

Amend S.B. 1596 in SECTION 1 of the bill, in Chapter 499, by adding a new Section 499.095 to read as follows:

Sec. 499.095. TRANSFERRED INMATES. A county that receives a payment from the Commission on Jail Standards for inmates being held by the county for another county shall forward the payment to the county that transferred the inmates.

Amendment - Stiles

Amend S.B. 1596 as follows:

On page 10, line 2, after the word “previous” add the words “state fiscal”.

Amendment - Stiles

Amend S.B. 1596 in SECTION 8 of the bill, in Section 413.018(a), by striking “1992” and substituting “1991”.

Amendment - Stiles

Amend S.B. 1596 by striking SECTION 13 of the bill and substituting a new SECTION 13 to read as follows:

SECTION 13. Chapter 26, Tax Code, is amended by adding Section 26.044 to read as follows:

Sec. 26.044. EFFECTIVE TAX RATE TO PAY FOR STATE CRIMINAL JUSTICE MANDATE. (a) The first time that a County adopts a tax rate after September 1, 1991 in which the state criminal justice mandate applies to the County, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(State Criminal Justice Mandate)

(Current Total Value - New Property Value)

(b) In the second and subsequent years that a County adopts a tax rate, if the amount spent by the County for the state criminal justice mandate increased over the previous year, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(This Year's State Criminal Justice Mandate -

Previous Year's State Criminal Justice Mandate)

(Current Total Value - New Property Value)

(c) The county shall include a notice of the increase in the effective maintenance and operation rate provided by this section, including a description and amount of the state criminal justice mandate, in the information published under Section 26.04 (e) and Section 26.06 (b) of this code.

(d) In this section, “state criminal justice mandate” means the amount spent by the County in the previous twelve months providing for the maintenance and operation cost of keeping inmates in county paid facilities after they have been

sentenced to the institutional division of the Texas Department of Criminal Justice as certified by the County Auditor based on information provided by the County Sheriff, minus the amount received from State revenue for reimbursement of such costs.

Amendment - Stiles

Amend S.B. 1596 as follows:

(1) Strike SECTION 14 of the bill and renumber the remaining sections of the bill accordingly.

(2) Strike SECTION 15 of the bill and substitute a new SECTION 15 to read as follows:

SECTION 15. (a) Except as provided by Subsection (b) of this section, effective September 1, 1993, the Penal Code is repealed.

(b) This section does not apply to Sections 12.31, 19.02, or 19.03, Penal Code.

Amendment - Stiles

Amend S.B. 1596 by adding an appropriately numbered section of the bill to read as follows and by renumbering the existing sections of the bill accordingly:

SECTION _____. A county that on the effective date of this Act is a party to a suit against the state or a state agency, the subject of which is the reimbursement of the county for the confinement of inmates in the county jail who are awaiting transfer to the institutional division of the Texas Department of Criminal Justice following conviction of a felony or revocation of probation, parole, or release on mandatory supervision, is:

(1) subject to the authority of the Commission on Jail Standards to order the transfer of inmates in the county jail under Subchapter E, Chapter 499, Government Code, and is liable for the payment of costs under Section 499.092(c) of that chapter; and

(2) not entitled to any payment from the commission under Subchapter E or from the community justice assistance division of the Texas Department of Criminal Justice under Section 13, Article 42.13, Code of Criminal Procedure.

Amendment - Von Dohlen

Amend S.B. 1596 by adding the following appropriately numbered sections to the bill to read as follows and renumbering the existing sections of the bill accordingly:

"SECTION _____. Section 497.054, Government Code, as revised by S.B. 232, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 497.054. HOUSING FOR PARTICIPANTS. (a) The pardons and paroles division, as necessary, shall designate facilities in an area in which residents are to be participants in the work program plan for the housing of those residents. The pardons and paroles division may not grant a resident work privileges unless:

(1) suitable housing for the resident exists in the area in which the resident is employed or has an offer of employment; or

(2) the resident is to be placed in a work facility that combines employment facilities and living quarters for the resident [~~and is located within 100 miles of the resident's recorded place of residence~~].

(b) The pardons and paroles division may assume custody of an eligible person who has previously been denied parole, or whose initial parole eligibility date is more than six months [~~one year~~] but less than two years from the projected date

of transfer to a work facility and transfer the person to a work facility. The pardons and paroles division may assume custody of a person whom the pardons and paroles division may transfer under Section 499.003(a) and transfer the person to a work facility.

SECTION ____ Section 497.056(b), Government Code, as revised by S.B. 232, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) The board shall adopt rules for the administration of the conditional work program. The rules must include a work program contract that includes an agreement by the resident to:

(1) contribute to the owner, operator, or manager of the work facility, from the funds received by the resident for the resident's participation in on-site industries' training and employment, not more than 80 percent of the funds, to be used or distributed by the owner, operator, or manager of the work facility to pay all or a part of:

(A) costs of supervision;

(B) costs of being quartered in the facility;

(C) restitution to the victim or victims of the resident;

(D) savings, to be retained for the resident in a designated account for the resident's benefit and receipt on release; and

(E) support of the resident's dependents, if any;

(2) serve at least six months [one calendar year] in the work facility before requesting parole review under Section 8(b), Article 42.18, Code of Criminal Procedure, and to serve at least six months [one calendar year] regardless of whether the resident becomes eligible for mandatory supervision under Section 8(c), Article 42.18, Code of Criminal Procedure, during that period [calendar year]; and

(3) participate in the employment, education, and rehabilitation programs available at the work facility, to the extent that participation is recommended by the professional staff of the facility.

Amendment - Colbert

Amend S.B. 1596 as follows:

(1) Add a new Section ____ as follows and renumber the subsequent sections as appropriate:

SECTION ____ Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.15 to read as follows:

Art. 37.15. TEXAS SENTENCING AND CORRECTIONS COMMISSION

Sec. 1. CREATION. The Texas Sentencing and Corrections Commission is created.

Sec. 2. DUTIES. The commission shall study the punishments prescribed for criminal offenses in this state, sentencing practices in criminal courts, and the effect of jail and prison overcrowding and lenient parole laws on sentences actually served by defendants convicted of criminal offenses. After completing the study, the commission shall propose legislation to:

(1) revise punishments for criminal offenses, basing the revision on:

(A) a narrower range of punishment for offenses; and

(B) proportional punishment, with the harshest punishments reserved for those offenders who have caused the greatest physical harm to individuals or harm to society;

(2) adequately expand prisons, jails, and community corrections facilities to confine those convicted defendants who pose the most significant threat to society; and

(3) revise probation and parole laws to ensure that:

(A) those defendants convicted of offenses that cause the greatest harm to society or pose the greatest threat of future harm to society serve a significant portion of their sentences in actual confinement;

(B) evaluations, based on supervisory need rather than capacity limitations, are made on each defendant released on probation or parole to determine the appropriate level of supervision for the defendant or the desirability of placing the defendant in special probation or parole programs; and

(C) good time credited towards parole or early release is earned through participation in education, job training and substance abuse treatment programs designed to provide the defendant the capability of acquiring gainful employment upon release; and

(4) adequately expand the probation and parole systems, including, as appropriate, special supervision and treatment programs within those systems, to allow each defendant released on probation or parole to receive supervision or treatment based on correctional needs rather than on capacity limitations.

Sec. 3. COMPOSITION. (a) The commission is composed of 15 members, five of whom appointed by the governor, five of whom appointed by the lieutenant governor, and five of whom appointed by the speaker of the House of Representatives, all of whom serving at the pleasure of the official by whom they were appointed.

(b) All members of the commission shall be generally experienced in criminal justice matters. In addition, there shall be at least one member of the commission experienced in each of the following categories:

(1) as a trial judge hearing criminal cases;

(2) as a prosecutor of criminal cases;

(3) as a criminal justice defense lawyer;

(4) in the administration of a statewide correction system;

(5) in the operation of a county jail; and

(6) as an advocate of crime victims' rights.

(c) The governor shall designate one member of the commission as a chairman of the commission, and the member serves as chairman at the pleasure of the governor.

Sec. 4. REIMBURSEMENT. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

Sec. 5. STAFF; CONTRACTS. The commission may employ staff as necessary for data collection, analysis, and research and other support services, and may contract for those services with agencies of the state or private consultants.

Sec. 6. SUBMISSION. The commission shall submit the proposed legislation described by Section 2 of this article to the governor, the Texas Department of Criminal Justice and the Legislative Criminal Justice Board not later than June 1, 1992.

Sec. 7. EXPIRATION. The commission is abolished and this article expires on June 1, 1993.

(2) Amend the caption to conform to the body of the bill.

The amendments were read.

Question—Shall the Senate concur in House amendments to S.B. 1596?

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 66**

Senator Dickson submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 66 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

DICKSON
GREEN
LUCIO
GLASGOW
HALEY

On the part of the Senate

S. THOMPSON
H. CUELLAR
RANGEL
GOODMAN
WENTWORTH

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE RESOLUTION 878

Senator Dickson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 72nd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of H.B. 66, relating to the jurisdiction, creation, and administration of certain county courts, to the creation of multicounty statutory county courts, and to the qualification of office for and compensation of judges of certain courts and certain county attorneys, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to substitute "county court created by statute" for "statutory county court" in Section 25.0003(e), Government Code, and in Section 26.052(a), Government Code.

This action is necessary to clarify that the language refers to all county courts created by statute, including statutory probate courts.

(2) Senate Rules 12.03(1) and (4) are suspended to permit the committee to renumber Sections 25.0026 and 25.0027, Government Code, as added by the bill, as Sections 25.00261 and 25.00262, Government Code, and to add the following language:

Sec. 25.00263. FEES. A judge of a statutory probate court shall assess the same fees as are prescribed by law relating to county judges' fees. The clerk of the court shall collect the fees and pay them into the county treasury on collection. A fee may not be paid to the judge.

Sec. 25.00264. FACILITIES; PERSONNEL. (a) The commissioners court of each county shall provide the physical facilities necessary to operate the statutory probate court in each county.

(b) The county attorney or criminal district attorney and sheriff shall serve each statutory probate court. The county clerk shall serve as clerk of each statutory probate court. The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

Sec. 25.00265. SEAL. The seal of each statutory probate court is the same as that provided by law for a county court except that the seal must contain the name of the statutory probate court as it appears in this chapter.

Sec. 25.00266. APPLICATION OF SUBCHAPTER. If a provision of this subchapter conflicts with a specific provision for a particular court or county, the specific provision controls.

This action is necessary to conform the bill to S.B. 542, relating to the powers and duties of statutory probate court judges.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add the following language:

SECTION 22. (a) Subchapter C, Chapter 25, Government Code, is amended by adding Sections 25.0741 and 25.0742 to read as follows:

Sec. 25.0741. ERATH COUNTY. Erath County has one statutory county court, the County Court at Law of Erath County.

Sec. 25.0742. ERATH COUNTY COURT AT LAW PROVISIONS. The judge of a county court at law may not engage in the private practice of law.

(b) Notwithstanding Section 25.0741, Government Code, as added by this Act, the County Court at Law of Erath County is created February 1, 1993, or on an earlier date determined by the commissioners court by an order entered in its minutes.

This action is necessary to conform H.B. 66 and S.B. 1469 relating to the creation of a county court at law in Erath County.

(4) Senate Rules 12.03(2) and (4), are suspended to permit the committee to delete Section 25.0862(f), Government Code, from the repealer and to add the following language:

SECTION 24. Section 25.0861, Government Code, is amended to read as follows:

Sec. 25.0861. GALVESTON COUNTY. (a) Galveston County has the following statutory county courts:

- (1) ~~Probate and County Court of Galveston County;~~
- ~~[(2)] County Court No. 1 of Galveston County; and~~
- (2) ~~[(3)] County Court No. 2 of Galveston County.~~

(b) Galveston County has one statutory probate court, the Probate and County Court of Galveston County.

SECTION 25. Section 25.0862, Government Code, is amended by amending Subsections (b), (j), (l), and (n), and adding Subsection (b-1) to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in[:

~~[(1) civil cases in which the amount in controversy exceeds \$500 and does not exceed \$50,000, excluding interest;~~

~~[(2)] family law cases and proceedings[, and~~

~~[(3) appeals of final rulings and decisions of the Texas Workers' Compensation Commission, regardless of the amount in controversy].~~

(b-1) The Probate and County Court of Galveston County has, concurrent with the statutory county courts, the jurisdiction provided by this section and other law for the statutory county courts.

(j) A special judge of a statutory county court or statutory probate court may be appointed or elected in the manner provided by law for the election or appointment of special county judges. A special judge of the County Court No. 1

or 2 of Galveston County is entitled to receive for services performed the same rate of compensation as the regular judge.

(l) The clerk of the statutory county courts and statutory probate court shall keep a separate docket for each court. The clerk shall tax the official court reporter's fees as costs in civil actions in the same manner as the fee is taxed in civil cases in the district courts. The district clerk serves as clerk of the [statutory] county courts in a cause of action arising under the Family Code and an appeal of a final ruling or decision of the Texas Workers' Compensation Commission [Industrial Accident Board], and the county clerk serves as clerk of the court in all other cases.

(n) The official court reporter of each statutory county court and each statutory probate court is entitled to the same compensation, paid in the same manner, as the official court reporters of the district courts in Galveston County. Each reporter is primarily responsible for cases in the reporter's court. Each reporter may be made available when not engaged in a jury trial to report jury trials in the following manner:

(1) the reporter of the Probate and County Court of Galveston County may report jury trials in the county court and, at the request of the district attorney, examining trials in the justice courts; and

(2) the reporters of the County Courts Nos. 1 and 2 of Galveston County may report cases in the Probate and County Court of Galveston County.

This action is necessary because of amendments made to the definition of statutory county court in Section 1 of the bill. The added text is necessary to avoid excluding the Probate and County Court of Galveston County from the application of the law that currently applies to statutory county courts in Galveston County.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add the following language:

SECTION 29. (a) Subchapter C, Chapter 25, Government Code, is amended by adding Sections 25.1141 and 25.1142 to read as follows:

Sec. 25.1141. HOPKINS COUNTY. (a) Hopkins County has one statutory county court, the County Court at Law of Hopkins County.

(b) This section expires December 31, 1996.

Sec. 25.1142. HOPKINS COUNTY COURT AT LAW PROVISIONS. (a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hopkins County has:

(1) except as limited by Subsection (b), concurrent with the district court, the jurisdiction provided by the constitution and by general law for district courts; and

(2) concurrent jurisdiction with the justice court in criminal matters.

(b) A county court at law does not have general supervisory control or appellate review of the commissioners court or jurisdiction of:

(1) felony jury trials;

(2) suits on behalf of the state to recover penalties or escheated property;

(3) misdemeanors involving official misconduct; or

(4) contested elections.

(c) The judge of a county court at law shall be paid an annual salary that is at least equal to 60 percent, but does not exceed 80 percent, of the annual salary that is paid by the state to a district judge in the county. The salary shall be paid from the same fund and in the same manner as other county officials are paid.

(d) The judge of a county court at law may not engage in the private practice of law.

(e) The commissioners court may authorize the judge of a county court at law to set the official court reporter's salary.

(f) At the request of the judge of a county court at law, jurors regularly impaneled by the district court for a week may be made available and shall serve for the week in the county court at law.

(g) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court, the clerk of the justice court for Precinct No. 1 of Hopkins County serves as clerk of a county court at law in matters of concurrent jurisdiction with the justice court, and the county clerk serves as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(h) This section expires December 31, 1996.

(b) Notwithstanding Section 25.0009, Government Code, or other law, the initial vacancy in the office of judge of the County Court at Law of Hopkins County shall be filled by election as provided by this subsection. The office of judge of the County Court at Law of Hopkins County exists for purposes of a special election to be held November 5, 1991. The qualified voters of Hopkins County shall elect the initial judge of the County Court at Law of Hopkins County for a three-year term beginning January 1, 1992. Thereafter, the judge of the County Court at Law of Hopkins County shall be elected for a four-year term as provided by Article XVI, Section 65, of the Texas Constitution. A vacancy after the initial vacancy is filled as provided by Section 25.0009, Government Code. To be eligible to have the candidate's name placed on the ballot, a candidate must file with the county clerk an application for a place on the ballot that contains the information required by Section 141.031, Election Code, including the candidate's political party alignment, if any. The application must be filed in accordance with Section 201.055, Election Code. The application must be accompanied by a filing fee of \$1,200 or by a petition signed by at least 500 registered voters. Fees received under this subsection shall be deposited in the general fund of the county. Except as provided by this subsection, the petition is subject to the requirements prescribed by Subchapter C, Chapter 141, Election Code. The party alignment of each candidate shall be printed on the official ballot next to each candidate's name. A candidate must receive a majority of the votes cast for the office to be elected under this section. The commissioners court shall canvass the returns not later than the third day after election day. If a candidate has received a majority of the votes cast, the county judge shall immediately prepare and deliver a certificate of election to the candidate. If no candidate receives a majority of the votes cast, not later than the fifth day after the date the results are declared, the county judge shall order a runoff election to be held not less than 15 or more than 25 days after the date of the election order. The names of the candidates who received the highest and next highest number of votes shall be placed on the runoff ballot. Notice of the runoff shall be given as provided by law but 10 days' notice is sufficient. The returns of the runoff shall be canvassed and the results declared in the manner provided for the first election. A certificate of election shall be issued to the winner of the runoff.

(c) Except as provided by Subsection (d) of this section, this section takes effect October 1, 1991.

(d) Subsection (a) of this section takes effect January 1, 1992.

This action is necessary to harmonize H.B. 66 and H.B. 2786, relating to the creation of a county court at law in Hopkins County.

(6) Senate Rules 12.03(2) and (4) are suspended to permit the committee to omit Section 25.1152(a), Government Code, from the repealer and to add the following language:

SECTION 30. (a) Section 25.1152(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Houston County has[;] concurrent jurisdiction with the

district [county] court in family law cases and proceedings including juvenile matters[, the probate jurisdiction provided by general law for county courts].

(b) Section 25.1152, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The district clerk serves as clerk of the court in family law cases and proceedings, and the county clerk serves as clerk for all other cases. The district clerk shall establish a separate docket for a county court at law. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

This action is necessary to conform H.B. 66 and H.B. 2147 relating to the jurisdiction and practice of the county courts at law of Houston County.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add the following language:

SECTION 31. (a) Section 25.1281, Government Code, is amended to read as follows:

Sec. 25.1281. JOHNSON COUNTY. Johnson County has the following [one] statutory county courts:

- (1) [court,] the County Court at Law No. 1 of Johnson County; and
- (2) the County Court at Law No. 2 of Johnson County.

(b) Notwithstanding Section 25.1281, Government Code, as amended by this Act, the County Court at Law No. 2 of Johnson County is created January 1, 1993.

(c) Notwithstanding Section 25.0009, Government Code, the initial vacancy in the office of judge on creation of the County Court at Law No. 2 of Johnson County shall be filled by election. The office of judge of the County Court at Law No. 2 of Johnson County exists for purposes of the primary and general elections in 1992. The qualified voters of the county shall elect the initial judge of the County Court at Law No. 2 of Johnson County at the general election in 1992 for a two-year term beginning January 1, 1993. Thereafter, the judge shall be elected for a four-year term as provided by Article XVI, Section 65, of the Texas Constitution. A vacancy after the initial vacancy is filled as provided by Section 25.0009, Government Code.

SECTION 32. Section 25.1282(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Johnson County has:

- ~~[(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and~~
- ~~[(2) concurrent jurisdiction with the district court in:~~
 - ~~[(A) civil cases in which the amount in controversy exceeds \$500, but does not exceed \$50,000, excluding interest; and~~
 - ~~[(B) family law cases and proceedings.~~

This action is necessary to conform H.B. 66 to H.B. 2787, relating to the creation of the County Court at Law No. 2 of Johnson County.

(8) Senate Rules 12.03(2) and (4) are suspended to permit the committee to omit Section 25.2512(a), Government Code, from the repealer and to add the following language:

SECTION 63. Section 25.2512, Government Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

- ~~[(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and~~
- ~~[(2) concurrent jurisdiction with the district court in:~~
 - ~~(1) eminent domain cases; and~~
 - ~~(2) family law [in-civil] cases and proceedings [in which the amount in controversy exceeds \$500, but does not exceed \$20,000, excluding interest and attorney's fees].~~

(j) The district clerk serves as clerk of a county court at law for family law cases and proceedings, and the county clerk serves as clerk for all other cases.

This action is necessary to conform H.B. 66 and S.B. 1491 relating to the jurisdiction of the Wise County Court at Law.

(9) Senate Rule 12.03(4) is suspended to permit the committee to add the following language:

SECTION 66. (a) Section 26.161, Government Code, is amended to read as follows:

Sec. 26.161. DENTON COUNTY. The County Court of Denton County has no ~~[the general jurisdiction of a]~~ probate, juvenile, ~~[court but has no other]~~ civil, or criminal jurisdiction.

(b) On the effective date of this section, the judge of the County Court of Denton County shall transfer all cases pending in the court to a county court at law in the county.

(c) When a case is transferred from one court to another as provided by Subsection (b) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a court from which a case is transferred, are required to appear before the court to which the case is transferred as if originally required to appear before the court to which the transfer is made.

This action is necessary to conform H.B. 66 and H.B. 2904, relating to the jurisdiction of the Denton County Court.

The resolution was read and was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1004

Senator Johnson submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 1004 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

JOHNSON
CARRIKER
PARKER
BROOKS
BIVINS
On the part of the Senate

WENTWORTH
T. HUNTER
B. HUNTER
RANGEL
MORENO
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 841**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 841** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
LYON
BROWN
HARRIS OF TARRANT
SIBLEY

On the part of the Senate

STILES
HIGHTOWER
TELFORD
RUSSELL

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1103**

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1103** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SIMS
ARMBRISTER
SIBLEY
BROWN
BIVINS
On the part of the Senate

EARLEY
DUTTON
SHELLEY
S. TURNER
YOST
On the part of the House

BILL TO BE ENTITLED
AN ACT

relating to the prevention of pollution from oil and gas exploration, development, and production activities, including the creation of an oil-field cleanup fund and the imposition of certain fees; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Sections 91.111, 91.112, and 91.113 to read as follows:

Sec. 91.111. OIL-FIELD CLEANUP FUND. (a) The oil-field cleanup fund is created as a special fund in the state treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$10 million. The oil-field cleanup regulatory fees on oil and gas shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$6 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

(1) penalties imposed under Section 85.381 of this code for violation of a law, order, or rule relating to well plugging requirements;

(2) proceeds from bonds and other financial assurances required by this chapter, subject to the refund provisions of Section 91.1091 of this code;

(3) private contributions, including contributions made under Section 89.084 of this code;

(4) expenses collected under Section 89.083 of this code;

(5) drilling permit fees imposed under Subsections (a) and (c) of Section 85.2021 of this code;

(6) civil penalties collected for violations of Chapter 89 of this code or of rules or orders relating to plugging that are adopted under this code;

(7) proceeds collected under Section 89.085 of this code;

(8) interest earned on the funds deposited in the fund;

(9) fees collected under Section 91.104 of this code;

(10) civil penalties or costs recovered under Section 91.457 or Section 91.459 of this code;

(11) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(12) costs recovered under Subsection (f) of Section 91.113 of this code;

(13) hazardous oil and gas waste generation fees collected under Section 91.605 of this code;

(14) oil-field cleanup regulatory fees on oil collected under Section 81.116 of this code;

(15) oil-field cleanup regulatory fees on gas collected under Section 81.117 of this code;

(16) fees for a reissued certificate collected under Section 85.167 of this code;

(17) fees collected under Subsection (b) of Section 91.1013 of this code; and

(18) legislative appropriations.

Sec. 91.112. PURPOSE OF THE FUND. (a) Money in the fund may be used by the commission or its employees or agents for:

(1) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 of this code that are

causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113 of this code;

(2) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89 of this code, or any other law administered or enforced by the commission under Title 3 of this code;

(3) implementing Subchapter N of this chapter and enforcing rules, orders, and permits adopted or issued under that subchapter; and

(4) preparing the report required under Subsection (b) of this section.

(b) The commission shall submit to the legislature, annually, a report that reviews the extent to which the funds provided under Section 91.111 of this code have enabled the commission to better protect the environment and enhance the income of the oil-field cleanup fund. The report shall include:

(1) the number of wells plugged;

(2) the number of wells abandoned;

(3) the number of inactive wells not currently in compliance with commission rules;

(4) the status of enforcement proceedings for all wells in violation of commission rules and the time period during which the wells have been in violation;

(5) the method by which the commission sets priorities by which it determines the order in which abandoned wells are plugged;

(6) a projection of the amount of oil-field cleanup funds needed for the next biennium for plugging of abandoned wells and remediating surface locations; and

(7) the status of implementation of the provisions of Section 89.085 of this code relating to possession and sale of equipment to recover plugging costs.

Sec. 91.113. CLEANUP BY COMMISSION. (a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 of this subchapter are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil-field cleanup fund to control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(c) The commission or its employees or agents, on proper identification, may enter the land of another for the purpose of controlling or cleaning up oil and gas wastes or other substances or materials under this section.

(d) The control or cleanup of oil and gas wastes or other substances or materials by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(e) The commission and its employees are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.

(f) If the commission controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission may request the attorney general to file suit in any court of competent jurisdiction in Travis County to recover these costs. Costs recovered under this subsection shall be deposited to the oil-field cleanup fund.

SECTION 2. Subchapter E, Chapter 81, Natural Resources Code, is amended by adding Sections 81.116 and 81.117 to read as follows:

Sec. 81.116. OIL-FIELD CLEANUP REGULATORY FEE ON OIL. (a) An oil-field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of five-sixteenths of one cent on each barrel of 42 standard gallons.

(b) The fee is in addition to the taxes imposed under Section 81.111 of this code and Chapter 202, Tax Code.

(c) Except as provided by Subsection (d) of this section, Chapter 202, Tax Code, applies to the administration and collection of the fee, and the penalties provided by that chapter apply to any person who fails to pay or report the fee.

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 of this code.

(e) Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited to the oil-field cleanup fund as provided by Section 91.111 of this code.

Sec. 81.117. OIL-FIELD CLEANUP REGULATORY FEE ON GAS. (a) An oil-field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-thirtieth of one cent for each thousand cubic feet.

(b) The fee is in addition to the tax imposed under Section 201.052, Tax Code.

(c) Except as provided by Subsection (d), the administration, collection, and enforcement of the fee is the same as for the tax imposed under Section 201.052, Tax Code.

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 of this code.

(e) Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited to the oil-field cleanup fund as provided by Section 91.111 of this code.

SECTION 3. Section 85.164, Natural Resources Code, is amended to read as follows:

Sec. 85.164. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Subsection (c), Section 18, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. Subchapter E, Chapter 85, Natural Resources Code, is amended by adding Section 85.167 to read as follows:

Sec. 85.167. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance has been canceled, the commission may not issue a new certificate of

compliance until the owner or operator submits to the commission a nonrefundable fee of \$100.

(b) Fees collected under this section shall be deposited to the oil-field cleanup fund.

SECTION 5. Section 85.2021, Natural Resources Code, is amended to read as follows:

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

(1) \$100 if the total depth of the well is 2,000 feet or less;

(2) \$125 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(3) \$150 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;

(4) \$200 if the total depth of the well is greater than 9,000 feet.

(b) An [Additionally, the] applicant shall submit an additional nonrefundable [a] fee of \$50 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(c) With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of \$100, unless the applicant has filed a bond under Section 91.1041 or Section 91.1042 of this code [(b) The drilling permit fee and the fee to expedite the drilling permit application may not be refunded].

(d) All [(c) Drilling permit] fees collected under this section shall be deposited in the state oil-field cleanup [well-plugging] fund except that fees[-Fees] to expedite a drilling permit application shall be deposited in the general revenue fund.

SECTION 6. Subsection (d), Section 89.083, Natural Resources Code, is amended to read as follows:

(d) Money collected in a suit under this section shall be deposited in the state oil-field cleanup [well-plugging] fund.

SECTION 7. Subsection (b), Section 89.121, Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the state oil-field cleanup [well-plugging] fund.

SECTION 8. Section 91.103, Natural Resources Code, is amended to read as follows:

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND OR ALTERNATE FORM OF FINANCIAL SECURITY. Any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under Section 91.142 of this code shall execute and file with the commission a bond or alternate form of financial security [(a) Before approval of an application, the commission may require the following persons to execute and file with the commission a bond:

[(1) an applicant to drill a new well or redrill or deepen an old well;

[(2) an operator who has acquired a producing well and who is requesting authorization to connect a producing well or wells to a pipeline or other outlet; and

[(3) an operator filing a well potential form who has reworked and brought into production a previously nonproducing well, resulting in making an application for an allowable for production of oil and gas from the well.

[(b) The commission may require the filing of a bond by any operator seeking an exception to the well-plugging requirements established by law or rules and orders of the commission].

SECTION 9. Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY [AMOUNT OF BOND]. (a) The commission shall require a bond or an alternate form of financial security to be filed with the commission as provided by Subsection (b) of this section.

(b) A person required to file a bond under Section 91.103 of this code may choose to file:

(1) an individual bond as provided under Section 91.1041 of this code;

(2) a blanket bond as provided under Section 91.1042 of this code;

(3) a nonrefundable annual fee of \$100, if the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:

(A) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;

(B) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and

(C) has paid all reimbursements of any costs and expenses assessed by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates;

(4) a nonrefundable annual fee equal to three percent of the bond that otherwise would be required; or

(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 of this code or the value of a blanket bond under Section 91.1042 of this code that otherwise would be required.

(c) A person who chooses to file a form of financial security other than a bond shall also submit a fee of \$100 for each application to extend the time to plug a well in accordance with Section 85.2021 of this code [may require that the bond be in an amount equal to the cost of plugging each well or in a blanket amount designed to assure the proper plugging of all wells drilled, to be drilled, or to be operated in this state].

SECTION 10. Chapter 91, Natural Resources Code, is amended by adding Sections 91.1041 and 91.1042 to read as follows:

Sec. 91.1041. INDIVIDUAL BOND. A person required to file a bond under Section 91.103 who operates one or more wells may file a bond in an amount equal to \$2 for each foot of well depth for each well.

Sec. 91.1042. BLANKET BOND. A person required to file a bond under Section 91.103 may file a blanket bond to cover all wells and operations for which a bond is required as follows:

(1) a person who operates 10 or fewer wells or performs other operations shall file a \$25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a \$50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a \$250,000 blanket bond.

SECTION 11. Section 91.105, Natural Resources Code, is amended to read as follows:

Sec. 91.105. BOND CONDITIONS. Each bond required by Section 91.103 of this code shall be conditioned that the operator will plug and abandon all wells and control, abate, and clean up pollution associated with an operator's oil and gas activities covered under the bond [the well] in accordance with the law of the state and the permits, rules, and orders of the commission.

SECTION 12. Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND OR ALTERNATE FORM OF FINANCIAL SECURITY. If a well covered by a bond or alternate form of financial security is transferred, sold, or assigned by its operator, the commission shall [may] require the party acquiring the well to file [execute] a new bond or alternate form of financial security as provided by this subchapter, and the bond or alternate form of financial security of the prior operator shall continue to be required and to remain in effect until the new bond or alternate form of financial security is provided or the commission determines that the financial security previously submitted to the commission by the person acquiring the well complies with this subchapter [is provided or filing of the bond is waived].

SECTION 13. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.110 to read as follows:

Sec. 91.110. FILING OF A DRILLING PERMIT APPLICATION. (a) The commission may not accept an application under Subsection (a) of Section 85.2021 of this code if:

(1) an officer, director, general partner, owner of more than 25 percent ownership interest, or trustee of the organization has, within the five years preceding the date on which the report is filed, held a position of ownership or control in the organization for which the application is filed or in any other organization registered with the commission; and

(2) during that period of ownership or control the organization violated a provision of this title or a commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(b) An organization has committed a violation if:

(1) an order finding the violation has been entered against the organization and all appeals have been exhausted; or

(2) the commission and the organization have entered into an agreed order relating to the alleged violation.

(c) A person holds a position of ownership or control in an organization if the person is:

(1) an officer or director;

(2) a general partner;

(3) the owner of a sole proprietorship;

(4) the owner of more than a 25 percent ownership interest; or

(5) the designated trustee.

(d) The commission shall accept the application if:

(1) the conditions that constituted the violation are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) all reimbursements of costs and expenses assessed by the commission to be collected in relation to those conditions are collected.

SECTION 14. Section 91.1013, Natural Resources Code, is amended to read as follows:

Sec. 91.1013. APPLICATION FEES [FEE]. (a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of \$100. In this section, "fluid injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or

production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of \$200.

(c) Fees collected under Subsection (b) of this section shall be deposited in the state oil-field cleanup fund.

SECTION 15. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT OF FUNDS. Subject to the refund provisions of Section 91.1091 of this code, proceeds [Proceeds] from bonds required pursuant to this chapter [state well-plugging requirements] shall be deposited in the oil-field cleanup [state well-plugging] fund.

SECTION 16. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.1091 to read as follows:

Sec. 91.1091. REFUND. The commission shall refund the proceeds from a bond or other form of security required under this subchapter if:

(1) the conditions that caused the proceeds to be collected are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) all reimbursements of costs and expenses assessed by the commission to be collected in relation to those conditions are collected.

SECTION 17. Section 91.109, Natural Resources Code, is amended to read as follows:

Sec. 91.109. DISPOSAL SITE BOND. A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 of this code, proceeds [Proceeds] from any bond or other form of financial security required by this section shall be placed in the oil-field cleanup fund [well-plugging fund provided by Section 89.152 of this code]. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 18. Subsection (b), Section 91.457, Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) of this section fails or refuses to close the pit in compliance with the commission's order and rules, the commission may [shall] close the pit using money from the oil-field cleanup fund and may [shall] direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 19. Subsection (c), Section 91.459, Natural Resources Code, is amended to read as follows:

(c) Any penalties or costs recovered by the attorney general under this subchapter [Section 91.457 of this code] shall be deposited in the oil-field cleanup [a saltwater disposal] fund.

SECTION 20. Chapter 91, Natural Resources Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. OIL AND GAS HAZARDOUS WASTE

Sec. 91.601. DEFINITIONS. In this subchapter:

(1) "Oil and gas hazardous waste" means oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(2) "Oil and gas waste" means oil and gas waste as defined in Section 91.1011 of this chapter.

Sec. 91.602. RULES. (a) To protect human health and the environment, the commission shall adopt and enforce rules and orders and may issue permits relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

(b) The rules adopted by the commission under this section must be consistent with the hazardous waste regulations adopted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.). The commission may adopt and enforce rules that are more stringent than the federal hazardous waste regulations if necessary to protect human health.

Sec. 91.603. ACCESS TO PROPERTY AND RECORDS. (a) A member or employee of the commission, on proper identification, may enter public or private property to:

(1) inspect and investigate conditions relating to the generation, transportation, treatment, storage, or disposal of oil and gas hazardous waste;

(2) inspect and investigate conditions relating to the development of rules, orders, or permits under Section 91.602 of this code;

(3) monitor compliance with a rule, order, or permit of the commission; or

(4) examine and copy, during reasonable working hours, those records or memoranda of the business being investigated.

(b) A member or employee acting under this section who enters an establishment on public or private property shall observe the establishment's posted safety, internal security, and fire protection rules.

Sec. 91.604. CRIMINAL PENALTY. (a) A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.

(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to \$10,000 for each day the violation is committed, or by both.

(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.

Sec. 91.605. HAZARDOUS OIL AND GAS WASTE GENERATION FEE.

(a) An annual fee is imposed on each operator who generates hazardous oil and gas waste.

(b) The commission by rule shall set the fee, which must:

(1) be based on the volume of hazardous oil and gas waste generated by the operator; and

(2) be reasonably related to the costs of implementing this subchapter and enforcing the rules, orders, and permits adopted or issued by the commission under this subchapter.

(c) The commission by rule shall also prescribe the procedures by which an operator must account for the volume of hazardous oil and gas waste generated and pay the fee.

(d) This section does not apply to an operator who, at all facilities operated in this state, satisfies the requirements established by the administrator of the United States Environmental Protection Agency for a conditionally exempt small quantity generator.

(e) The fees collected under this section shall be deposited in the oil-field cleanup fund.

SECTION 21. Section 29.001, Water Code, is amended to read as follows:

Sec. 29.001. SHORT TITLE. This chapter may be cited as the Oil and Gas Waste [Salt Water] Haulers Act.

SECTION 22. Subdivisions (3) and (4), Section 29.002, Water Code, are amended to read as follows:

(3) "Oil and gas waste" means oil and gas waste as defined by Section 91.1011, Natural Resources Code, and includes ["Salt water" means] water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) "Hauler" means a person who transports oil and gas waste [salt water] for hire by any method other than by pipeline.

SECTION 23. Section 29.011, Water Code, is amended to read as follows:

Sec. 29.011. APPLICATION FOR PERMIT. Any person may apply to the railroad commission for a permit to haul and dispose of oil and gas waste [salt water].

SECTION 24. Section 29.013, Water Code, is amended to read as follows:

Sec. 29.013. CONTENTS OF APPLICATION. The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for [salt water] hauling oil and gas waste;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of oil and gas waste [salt water];

(3) include an affidavit from a person who operates an approved system of oil and gas waste [salt water] disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by railroad commission rules.

SECTION 25. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE ~~[BOND]~~. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil-field cleanup fund ~~[Before issuing a permit to a person whose application it has approved, the railroad commission shall require the person to file with it a bond in the amount of \$5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgment against the permittee for damages done to the person's property by the permittee's improper hauling, handling, or disposal of salt water. However, the railroad commission may dispense with the bond requirement on a proper showing of financial responsibility].~~

SECTION 26. Section 29.034, Water Code, is amended to read as follows:

Sec. 29.034. **ACCESS TO PROPERTY.** Members and employees of the railroad commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the hauling of oil and gas waste [salt water], to monitor compliance with a rule, permit, or other order of the railroad commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's posted safety, internal security, and fire protection rules.

SECTION 27. Section 29.041, Water Code, is amended to read as follows:

Sec. 29.041. **HAULING WITHOUT PERMIT.** No hauler may haul or [and] dispose of oil and gas waste [salt water] off the lease, unit, or other oil or gas property where it is generated [produced] unless the hauler has a permit issued under this chapter.

SECTION 28. Section 29.042, Water Code, is amended to read as follows:

Sec. 29.042. **EXCEPTIONS [EXCEPTION].** (a) A person may haul oil and gas waste [salt water] for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

(b) The commission by rule may except from the permitting requirements of this chapter specific categories of oil and gas waste other than salt water.

SECTION 29. Section 29.043, Water Code, is amended to read as follows:

Sec. 29.043. **USING HAULERS WITHOUT PERMIT.** No person may knowingly utilize the services of a hauler to haul or [and] dispose of oil and gas waste [salt water] off the lease, unit, or other oil or gas property where it is generated [produced] if the hauler does not have a permit as required under this chapter.

SECTION 30. Section 29.044, Water Code, is amended to read as follows:

Sec. 29.044. **DISPOSING OF OIL AND GAS WASTE [SALT WATER].** (a) No hauler may dispose of oil and gas waste [salt water] on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal facility [pit] without written authority from the railroad commission.

(b) No hauler may dispose of oil and gas waste [salt water] on property of another in other than a railroad commission-approved disposal facility without the written authority of the landowner.

SECTION 31. Section 29.045, Water Code, is amended to read as follows:

Sec. 29.045. **USE OF UNMARKED VEHICLES.** No person who is required to have a permit under this chapter may haul oil and gas waste [salt water] in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

SECTION 32. The following laws are repealed:

- (1) Subsection (d), Section 91.459, Natural Resources Code; and
- (2) Subchapter F, Chapter 89, Natural Resources Code.

SECTION 33. (a) All funds in the well plugging fund under Section 89.151, Natural Resources Code, repealed by this Act, are transferred to the oil-field cleanup fund, Section 91.111, Natural Resources Code, as added by this Act.

(b) For the purpose of determining whether a bond or other security may be required under a provision of the Natural Resources Code amended or added by this Act, the Railroad Commission of Texas may consider violations of state law or commission rules, orders, or permits without regard to whether the violations occurred before, on, or after the effective date of this Act.

SECTION 34. Fees imposed under Sections 85.2021, 81.116, and 81.117, Natural Resources Code, are repealed effective August 31, 1999.

SECTION 35. This Act takes effect September 1, 1991, except that Sections 21 through 24 and Sections 26 through 31 of this Act take effect January 1, 1992.

SECTION 36. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE ON HOUSE BILL 7

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 7 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on H.B. 7 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chair; Parker, Barrientos, Montford, Truan.

SENATE BILL 923 WITH HOUSE AMENDMENT

Senator Tejeda called S.B. 923 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Wallace

Amend S.B. 923 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the liability of a person for demolishing, causing to be demolished, or adversely affecting a historic structure without a permit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 315, Local Government Code, is amended by adding Section 315.006 to read as follows:

Sec. 315.006. LIABILITY FOR ADVERSELY AFFECTING HISTORIC STRUCTURE OR PROPERTY. (a) In this section, "historic structure or property" means a historic structure as defined by Section 442.001, Government Code, or a structure or property that is designated as historic by a political subdivision of the state, the state, or the federal government.

(b) A person is liable to a municipality for damages if the municipality has a demolition permit and a building permit procedure and the person:

(1) demolishes, causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a historic structure or property that is located in the municipality; and

(2) does not obtain the appropriate demolition or building permit or other form of written permission from the municipality before beginning to demolish, cause the demolition of, or otherwise adversely affect the structural, physical, or visual integrity of the structure or property.

(c) If the structural, physical, or visual integrity of the structure or property is adversely affected to the extent that it is not feasible to restore the structural, physical, or visual integrity substantially to its former level, the damages are equal to the cost of constructing, using as many of the original materials as possible, a new structure or property that is a reasonable facsimile of the historic structure or property and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical, or visual integrity of the structure or property substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible, and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(d) Instead of accepting monetary damages, the municipality may permit the liable person to construct, using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property or to restore, using as many of the original materials as possible, the historic structure or property and to pay the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(e) Damages recovered under this section shall be deposited in a special fund in the municipal treasury and may be used only to construct, using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property, to restore, using as many of the original materials as possible, the historic structure or property, or to restore another historic structure or property, as determined by the municipality.

(f) The construction of a facsimile structure or property under Subsection (d) or (e) must be undertaken at the location designated by the municipality, which may be the same location as that of the demolished historic structure or property.

(g) The municipality may make contracts and adopt ordinances as necessary to carry out this section.

(h) Each municipality shall file in the real property records of the county clerk's office of each county in which the municipality is located a written instrument listing for each historic structure or property that is located in the municipality and county and is designated as historic by a political subdivision of the state the following information:

(1) The street address, if available;

(2) The legal description of the real property on which the building is located; and

(3) The name of the owner of the real property, if that information can be determined with a reasonable effort.

(i) A person is liable to the Texas Historical Commission for damages if:

(1) the person:

(A) demolishes, causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a historic structure or property that is located in the municipality; and

(B) does not obtain the appropriate demolition or building permit or other form of written permission from the municipality before beginning to demolish, cause the demolition of, or otherwise adversely affect the structural, physical, or visual integrity of the structure or property; and

(2) the commission determines that the municipality has not filed a civil action under Subsection (b) and has not taken appropriate action to carry out Subsection (d) before the 90th day after the date the action described by Subdivision (1)(A) occurs.

(j) If the Texas Historical Commission makes a determination under Subsection (i)(2), the commission may enforce this section, and the municipality may not act under this section. Damages recovered under this subsection shall be deposited in the Texas preservation trust fund.

SECTION 2. Chapter 442, Government Code, is amended by adding Section 442.016 to read as follows:

Sec. 442.016. LIABILITY FOR ADVERSELY AFFECTING HISTORIC STRUCTURE OR PROPERTY. (a) In this section, "historic structure or property" means a historic structure or a structure or property that is designated as historic by a political subdivision of the state, the state, or the federal government.

(b) A person is liable to the commission for damages if the person:

(1) demolishes, causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a historic structure or property that is not located in a municipality that has a demolition permit and a building permit procedure; and

(2) does not obtain written permission from the commission before beginning to demolish, cause the demolition of, or otherwise adversely affect the structural, physical, or visual integrity of the structure or property.

(c) If the structural, physical, or visual integrity of the structure or property is adversely affected to the extent that it is not feasible to restore the structural, physical, or visual integrity substantially to its former level, the damages are equal to the cost of constructing, using as many of the original materials as possible, a new structure or property that is a reasonable facsimile of the historic structure or property and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical, or visual integrity of the structure or property substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible, and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(d) Instead of accepting monetary damages, the commission may permit the liable person to construct, using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property or to restore, using as many of the original materials as possible, the historic structure or property and to pay the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(e) Damages recovered under this section shall be deposited in the Texas preservation trust fund.

(f) The construction of a facsimile structure or property under Subsection (d) must be undertaken at the location designated by the commission, which may be the same location as that of the demolished historic structure or property.

(g) The commission may make contracts and adopt rules as necessary to carry out this section.

(h) The commission shall file in the real property records of the county clerk's office in each county in which a historic structure or property that is included on the National Register of Historic Places or that is designated as a Recorded Texas Historic Landmark is located a written instrument listing:

(1) The street address or mailing address;

(2) The legal description of the real property on which the building is located, if available in the Commission's records, otherwise other locational information in the Commission's records that identifies the location of the structure or property; and

(3) The name of the owner of the real property at time of designation, if available in the Commission's records.

SECTION 3. Section 315.006, Local Government Code, as added by this Act, and Section 442.016, Government Code, as added by this Act, apply only to liability for an adverse effect to a historic structure or property that begins on or after September 1, 1991.

SECTION 4. This Act takes effect September 1, 1991.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Tejeda and by unanimous consent, the Senate concurred in the House amendment to S.B. 923 by a viva voce vote.

SENATE BILL 333 WITH HOUSE AMENDMENT

Senator Johnson called S.B. 333 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment on Third Reading - Blair

Amend S.B. 333 on third reading as follows:

On page 1, line 17, following the word "law" delete the remainder of the sentence.

The amendment was read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendment to S.B. 333 by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1704

Senator Brooks called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1704 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on H.B. 1704 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chair; Ratliff, Moncrief, Truan, Zaffirini.

SENATE BILL 1333 WITH HOUSE AMENDMENT

Senator Krier called S.B. 1333 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Goodman

Amend S.B. 1333 as follows:

On page 1, lines 21 and 22, strike the words "each court has concurrent" and substitute "the transferring court retains".

The amendment was read.

On motion of Senator Krier and by unanimous consent, the Senate concurred in the House amendment to S.B. 1333 by a viva voce vote.

SENATE BILL 1596 WITH HOUSE AMENDMENTS

The Senate resumed consideration of S.B. 1596 with House amendments.

Question—shall the Senate concur in the House amendments to S.B. 1596?

(Senator Haley in Chair)

Senator Turner moved to concur in the House amendments to S.B. 1596.

Senator Brooks offered a substitute motion to not concur in the House amendments to S.B. 1596, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

By unanimous consent, Senator Turner withdrew his motion to concur in House amendments to S.B. 1596.

Question recurring on the adoption of the substitute motion, the substitute motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 1596 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Montford, Lyon, Brooks, Krier.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2140**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 2140 have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
LYON
SIMS
GREEN
ZAFFIRINI

On the part of the Senate

BAILEY
BLACKWOOD
HOLZHEAUSER

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1704

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 1704 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROOKS
RATLIFF
MONCRIEF
TRUAN
ZAFFIRINI

On the part of the Senate

RODRIGUEZ
HIRSCHI
PARK
HARRIS

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Green and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider H.B. 1843 today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider H.B. 2029 today.

CONGRATULATORY RESOLUTIONS

H.C.R. 251 - (Ratliff): Honoring Billie F. Chapman of Austin for her many years of dedicated service as the executive director of the Vocational Home Economics Teachers Association.

S.C.R. 163 - By Glasgow: Paying tribute to the Bud Light Texas Team Roping Association, a new organization that proudly benefits the North Fort Worth Historical Society.

S.R. 860 - By Brown: Recognizing the Brazoswood Buccaneers Baseball Team on their outstanding achievements throughout the 1991 season.

S.R. 863 - By Parker: Commending Captain A. H. White, Commander of Air Group-3, for his exemplary performance in carrying out his assignments during the Persian Gulf War.

S.R. 865 - By Leedom: Recognizing the members of the 136th Tactical Airlift Wing and its component organizations for their invaluable support of Operation Desert Storm and Operation Desert Shield.

S.R. 866 - By Leedom: Paying tribute to the courageous service personnel in the 136th Mobile Aerial Port Squadron who served in Operation Desert Storm and Operation Desert Shield.

S.R. 867 - By Sims: Paying tribute to Dr. David Wade, who has made an immeasurable contribution to the health and welfare of the citizens of Texas and the nation over the past 50 years.

S.R. 869 - By Turner: Extending congratulations to Myra Jane McCormick Draper of Columbus for being named "Woman of the Year" for 1991 by the Alpha Iota Upsilon and Xi Chi Kappa chapters of Beta Sigma Phi sororities.

S.R. 870 - By Turner: Extending congratulations to Mr. and Mrs. Calford Largent of Centerville on the occasion of their 50th wedding anniversary.

S.R. 871 - By Turner: Extending congratulations to Mr. and Mrs. James Elgin of Buffalo on the occasion of their 50th wedding anniversary.

S.R. 872 - By Turner: Extending congratulations to Mr. and Mrs. Albert Jackson Keels on the occasion of their 50th wedding anniversary.

S.R. 873 - By Turner: Extending congratulations to Dr. and Mrs. Ralph A. Boelsche of Industry on the occasion of their 64th wedding anniversary.

S.R. 874 - By Turner: Extending congratulations to Tracey Wegenhoft for being named the 1991 Conservation Education Teacher of the Year for the State of Texas by the National Association of Conservation Districts.

S.R. 875 - By Turner: Extending congratulations to Mr. and Mrs. Frank Beseda of Caldwell on the occasion of their 50th wedding anniversary.

S.R. 876 - By Turner: Extending congratulations to Kay and Si Grider on the occasion of their 50th wedding anniversary.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 12:40 a.m. adjourned until 10:00 a.m. today.

SEVENTY-EIGHTH DAY
(Monday, May 27, 1991)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend John Pitts, St. Matthews Episcopal Church, Austin, offered the invocation as follows:

O heavenly Father, who is our strength at all times in our lives and who is the fountain of all wisdom and truth: We ask You this day, the last day of this regular session for the Senate of the State of Texas, to guide and bless the Senators that they may have strength this day to do Your will in all that they do; endue them with the spirit of wisdom, and allow them to be seekers after the truth. Calm their spirits this day that they may see and feel Your hand among them as they go about the important ministry of leading this great State and passing the statutes which will allow this State to be an even better place for Your children. Give them a sense of unity as they are bound together for the hours that stretch before them. All this we ask through Your son Jesus Christ, who is the author of peace, unity and tranquility. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 2029

Senator Green submitted the following report for the Committee on Jurisprudence:

H.B. 1843

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2277**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate